

**FISHERIES USER FEES UNDER
THE MAGNUSON ACT**

HEARING

BEFORE THE

SUBCOMMITTEE ON FISHERIES MANAGEMENT

OF THE

COMMITTEE ON

MERCHANT MARINE AND FISHERIES

HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

ON

H.R. 4404

**A BILL TO AMEND THE MAGNUSON FISHERY CON-
SERVATION AND MAGNUSON ACT TO PROMOTE THE
LONG-TERM SUSTAINABILITY OF MARINE FISH-
ERIES, AND FOR OTHER PURPOSES**

H.R. 4430

**A BILL TO AMEND THE MAGNUSON FISHERY
CONSERVATION AND MANAGEMENT ACT**

JUNE 29, 1994

Serial No. 103-111

Printed for the use of the Committee on Merchant Marine and Fisheries



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FISHERIES USER FEES UNDER THE MAGNUSON ACT

WEDNESDAY, JUNE 29, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES MANAGEMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The Subcommittee met, pursuant to call, at 2:40 p.m., in room 1334, Longworth House Office Building, Hon. Thomas J. Manton [chairman of the Subcommittee] presiding.

Present: Representatives Manton, Hughes, Unsoeld, Lancaster, Hamburg, Cantwell, Pallone, Young, Torkildsen, and Gilchrest.

Also present: Representative Callahan.

Staff Present: Jeffrey Pike, Chief of Staff; Suzanne J. Waldron, Press Secretary; Jim Mathews, Staff Director; Greg Lambert, Counsel; Lori Rosa, Staff Assistant; Jean Flemma, Frank Lockhart, Chris Mann, and Doug Cheramie, Professional Staff; Bill Price, NOAA detailee; Finley Anderson, Bonnie Bruce, and Amy Santin, Sea Grant Fellows; Rodney Moore, Jr., and David Whaley, Minority Professional Staff; and Margherita Woods, Minority Staff Assistant.

STATEMENT OF HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. MANTON. Good afternoon, ladies and gentlemen.

I want to apologize for a late start. We caught two votes right about 2 p.m. and some of the members will be drifting in as they complete their voting.

Welcome to our final hearing on the Magnuson Act. A little more than 2 months ago, the Administration completed its review of the Magnuson Fishery Conservation and Management Act and submitted legislative recommendations to Congress. By now, I hope that my colleagues have had an opportunity to review the Administration proposal which has been introduced as H.R. 4430. The Administration proposal, as well as the Marine Fish Conservation Network bill, which was introduced by my colleague, Wayne Gilchrest, both recognize that the current management system does not always meet our conservation goals. In fact, it seems that almost everyone recognizes that the Magnuson Act has failed in some respects to protect the health of our Nation's fisheries.

This convergence of views brings to mind a statement made yesterday in this very hearing room by our new Coast Guard Commandant, Robert Kramek. Admiral Kramek, when asked about Coast Guard resources dedicated to the interdiction of drugs and

undocumented aliens, commented that these efforts were not adversely affecting the Coast Guard's ability to enforce fisheries laws. The reason for this, she stated, is that so many fisheries are closed or have so drastically limited seasons that enforcing the laws in the few remaining open fisheries does not require many resources.

While the Commandant somewhat overstates the condition of our fisheries, his testimony highlights once again the need for prompt action to reauthorize the Magnuson Act.

In reviewing the Magnuson Act, it seems that its purposes and the national standards established by the Act can be reduced to the basic goal of conserving our fisheries for the maximum benefit of all Americans. The Act seeks to meet this goal, while ensuring that commercial fishermen can make a decent living and recreational fishermen can have a reasonable opportunity to enjoy this sport.

As we complete our hearings and prepare to mark up H.R. 780, my legislation to reauthorize the Magnuson Act, I am committed to moving a bill that will promote fisheries conservation while meeting the reasonable expectations of fishermen who depend on this resource for recreation and employment.

Achieving these often conflicting goals is no easy task. But I am confident we can do better in meeting the needs of our citizens, be they fish harvesters, fish consumers, or pure fish conservationists.

I look forward to hearing from our witnesses on the pros and cons of the two proposals before us. I see our Ranking Member, Mr. Young, is not here so we will bypass him temporarily and see if there are members who have an opening statement.

Mr. MANTON. Are there any opening statements?

The gentlelady from Washington.

STATEMENT OF HON. JOLENE UNSOELD, A U.S. REPRESENTATIVE FROM WASHINGTON

Mrs. UNSOELD. Thank you, Mr. Chairman.

I am looking forward to hearing today from the witness on the subject of user fees under the Magnuson Act.

The conservation and management of our Nation's fishery resources has become increasingly complex and expensive. In order to manage effectively these renewable resources in a sustainable fashion, I believe we have to identify the financial resources to support scientific and statistical research.

We have trouble getting enough money into any of the budgets to have the Administration pick it up so we have to figure out a better way to have the financial resources, both for the scientific research, and enforcement and management activities.

In the Northwest, the fishing industry recognizes user fees as an acceptable means to pay the costs of management activities, including an ITQ program, but before we rush into general acceptance of user fees, certain factors need to be taken into consideration.

The coastal fishing communities in southwest Washington have been devastated economically by the closure of the summer ocean salmon fishing. How could fishermen in small towns be expected to pay user fees when they cannot even pay moorage fees or fuel bills or the ransom fee to Canada to pass through their waters?

We hope that the salmon stocks will rebound in the future, but until then, we must be aware of the financial constraints affecting these fishermen.

In the north Pacific, fees and taxes in a variety of forms have already become a regular component of the fishery. The current system has raised questions of fairness, which also must be addressed if we are to go forward with a national policy on user fees.

Any Magnuson Act user fee amendment should contain provisions which clarify how user fee revenues generated in one region will be invested back into that region to protect its resources.

Finally, I have a compilation of existing fees collected around the Nation broken down State by State, fishery by fishery. These materials provide great insight into user fees, and I have not yet gotten them copied, but I will and I would like to make them available to the Committee.

[The information follows at the end of the hearing.]

Mr. MANTON. The gentleman from Alaska, Mr. Young.

**STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE
FROM ALASKA, AND RANKING MINORITY MEMBER, SUB-
COMMITTEE ON FISHERIES MANAGEMENT**

Mr. YOUNG. Thank you, Mr. Chairman.

It seems that these hearings on the reauthorization of the Magnuson Fisheries Conservation and Management Act will never end, but I do thank you. We are going to hear testimony from our good friend from Maryland, Mr. Gilchrest, and of course, the Administration position.

I do have some questions about the Administration bill though. H.R. 4430 addresses ITQ's but not CDQ's, which are of tremendous importance to the State of Alaska and local small communities, and I would like to know the Administration position on CDQ's.

Also, H.R. 4430 deletes the limits on the Secretary's authority to establish fees, giving him a free license to do as he wishes to do. I do not disagree with the establishment of fees in some cases, but what concerns me is who is going to be affected by the fees and where the money goes after it is collected.

Again, I would like to restate what has been already stated, that I do not agree and never will agree with money being collected as a fund-raiser to the general fund. If the money is collected in the region, the money should be spent in that region for the continued protection of the species that we are trying to maintain under the Magnuson Act.

The big issue we see in the paper most of the time is bycatch and waste. This is a very serious concern. I believe that fishermen can fish clean. They fished clean before the Magnuson Act. They can fish clean after the Magnuson Act. They have done it before and should do it again.

I am interested in incentives though, not clubs to prevent bycatching and would like to know the Administration view on this idea.

What suggestions do they have on the type of incentives that could be given to fishermen to decrease their bycatch and their waste?

By the way, I do not support full utilization of what is caught. Full utilization only rewards those that do have bycatch and thus killing, not maintaining, the species which we are trying to protect and provide for continued consumption.

These are some of the areas of concern I have with the Administration's bill and will ask further questions later and will submit to them in writing those questions on which I wish to be informed.

In closing, I would like to say for those people who would like to see the end of commercial fishing, there are those, Mr. Chairman, by the way, that believe that and there are those that would like to see the end of recreational fishing, and remind them that the human being is also part of that food chain and will continue to be so.

The Magnuson Conservation Management Act is an important piece of legislation because it combines conservation, and management of that Act. It includes conservation and management to protect every level of the food chain.

Mr. YOUNG. I ask permission to submit for the record on behalf of Mr. Fields from the Texas Shrimp Association a letter opposing the Administration's bill.

Mr. MANTON. Without objection, so ordered.

[The letter follows at the end of the hearing.]

[The prepared statement of Mr. Fields follows:

STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES

Mr. Chairman, the Subcommittee meets once again to hear testimony on the reauthorization of the Magnuson Fishery Conservation and Management Act. While the Subcommittee has examined virtually every aspect of this landmark law, we have not had an adequate discussion of the Administration's user fee proposal. I am, therefore, pleased that we will be reviewing this recommendation today.

It is my hope that we will keep the hearing record open so that interested groups can submit comments on those fees contained in H.R. 4430, since they are not participating in this hearing.

Mr. Chairman, we have received mountains of testimony on the reauthorization of the Magnuson Act, and it is clear that there are some areas which need further congressional clarification.

One of my main concerns with H.R. 4430 is the proposed implementation of fees and how these funds will be spent. I am especially concerned with the way this fee proposal has been portrayed to Congress. Earlier this year, we were told that the increases for fisheries management and sustainable development programs, included in the President's budget, were not contingent on the imposition of fees. We were also told that the Administration would work with us in developing a fair fee schedule.

Despite these assertions, I have recently learned that NOAA officials have indicated to the House Appropriations Committee that these increases in fisheries programs are not possible without raising over \$80 million in new user fees. What is the real answer?

I was also very distressed to learn that the Administration recently attempted to have these new fees incorporated within the Fiscal Year 1995 Commerce, Justice, State, and Judiciary Appropriations bill without the consent of this authorizing Committee. If this fee is fair and reasonable, then why is it necessary to circumvent this Committee? If the Administration is realistic in its desire to enact fees, then they need to work with us, not around us. A major new fee being charged on the harvest of any of our renewable natural resources deserves a thorough public hearing. There are a lot of unanswered questions that need to be addressed before this proposal is included in any legislation reported out by this Committee.

Mr. Chairman, there are several other areas which, in my judgment, should be addressed in this reauthorization effort. For instance, it is clear from our hearings that the public perceives there is a conflict of interest by some members of our Regional Councils. While I believe there is adequate authority for the Secretary of

Commerce to ensure that no Council member is personally enriching himself at the expense of the fishery, we need to make some adjustments to maintain public confidence in our resource managers.

It is also clear that we need to encourage the Secretary and the Councils to do more to ensure that fisheries are not overfished to the point that the fishery needs to be closed and fishermen are put out of work. Habitat protection may also be necessary to preserve various stocks throughout this country.

Mr. Chairman, I look forward to working with you to draft a reasonable and comprehensive reauthorization of the Magnuson Act. It is imperative that this important law be extended this year so that we can prevent the kind of stock collapses that are occurring on both the east and west coasts of this Nation.

Thank you, Mr. Chairman.

Mr. MANTON. The Chair recognizes Mr. Pallone of New Jersey for an opening statement.

STATEMENT OF HON. FRANK PALLONE, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. PALLONE. Mr. Chairman, I will try to be brief.

I wanted to indicate that I do not support the Administration's proposal to implement user fees. I want to give a few reasons why I think that it is inappropriate to charge fishermen a fee on these fish landings.

First of all, the fishing industry is in dire straits, as this Committee knows, in many parts of the country, not only in New England, but also in the Mid-Atlantic. We are in very bad shape, so bad that the Department of Commerce is currently giving out \$30 million in emergency aid to Northeast fisherman.

In my opinion, this begs the question, does it really make sense for the government to, on the one hand ask for fishermen to pay an additional fee, and on the other hand, to give financial aid to fisheries that are in dismal shape?

Second, fishermen already pay taxes to the government and is it right that they be asked to pay again for services that the government ought to provide anyway?

The third point is that there are differences between the fishing industry and other industries that extract natural resources. In the oil mining and timber industries, any fees that are paid are usually paid by a large corporation that can write the fees off as a business expense.

But most fishing boats are owned by fishermen, not giant corporations and they can't afford the additional expense of fees.

Many fishermen have emphasized to me that the prices for many fish are set by the world market and there really is no leeway to pass on these costs to the retailers or wholesalers, which means the cost of fees would be borne by the fishermen and vessel owners themselves.

Finally, I think the loss of income and jobs will be even greater in the ITQ fisheries if we go along with the Administration's language.

One of the largest ITQ fisheries in the country, the ocean quahog and surf clam fishery takes place off the Coast of New Jersey and my Port of Belford, I think, is the port which lands the greatest amount of ocean quahogs.

You probably like Italian food like I do. If you have ever eaten any of the red or white clam sauce from the supermarket, you have probably eaten ocean quahogs from New Jersey.

I hope that we can continue to supply the world with clam sauce, but if the 3 percent landing fees were to go into effect, it might not be as inexpensive and many jobs might be lost in the process.

So I am very concerned about this proposal. I think that it is the wrong way to go and would like to see what some of the witnesses are going to say in that regard.

Mr. MANTON. The calamari; is that affected?

Mr. PALLONE. The same thing.

Mr. MANTON. The Chair recognizes Mr. Torkildsen of Massachusetts.

STATEMENT OF HON. PETER G. TORKILDSEN, A U.S. REPRESENTATIVE FROM MASSACHUSETTS

Mr. TORKILDSEN. I ask unanimous consent to have my entire statement read into the record.

Mr. MANTON. Without objection.

[The prepared statement of Mr. Torkildsen follows:]

STATEMENT OF HON. PETER G. TORKILDSEN, A U.S. REPRESENTATIVE FROM MASSACHUSETTS

Mr. Chairman, as a representative from a district which includes the largest fishing port (in tonnage) on the eastern seaboard, I strongly support reauthorization of the Magnuson Act and look forward to improving the Act that has provided some, but by no means sufficient, protection of United States fisheries resources since 1976.

In considering reauthorization, we need to focus on improving the scientific information collected and used to manage fisheries. I have witnessed firsthand the economic devastation which results from the closure or restriction of fisheries and strongly believe that such decisions must be made with the best available scientific data.

Most often, those with firsthand knowledge of fisheries, the fishermen themselves, are only rarely or partially involved in making new regulations. In reauthorizing the Magnuson Act, we must provide for greater input from fishermen in the development of management plans.

I have particular concerns with both bills being discussed today. The Administration's bill includes the imposition of fees to cover the costs of developing and implementing conservation and management plans. Fishermen who are already suffering severe economic devastation from fishing restrictions, like those imposed under amendment five regulating groundfish, should not be asked to pay a fee in order to fund the implementation of further restrictions on their livelihood. These fishermen simply cannot afford another economic hit.

I also have major concerns with the Gilchrest bill, H.R. 4404. There is a provision in that bill which changes the current management of highly migratory fish species, such as the blue fin tuna. Currently, regional councils are not allowed to impose greater restrictions on blue fin tuna than the restrictions agreed to under international law. These species are known to migrate beyond the jurisdiction of any single regional council and beyond the 200-mile U.S. zone. H.R. 4404 would allow the United States to more severely restrict U.S. citizens' access to blue fin tuna stocks than is required under ICCAT management plans. Obviously, ICCAT nations could and would ignore whatever restrictions come from these regulations. The only ones affected would be U.S. fishing families.

If there is concern that international agreements are insufficient for the protection of these highly migratory species, changes should be made in the way those agreements are made, not by unilaterally restricting our own fishermen.

I hope an improved Magnuson Act will be reauthorized this year.

Mr. TORKILDSEN. I share the concerns of my colleagues about the fee schedule. Certainly Massachusetts and the Coast of New England fishing families have been brutalized both by the depleted stocks as well as by regulations which have closed entire areas and as was mentioned, the Clinton Administration did respond very quickly.

Secretary Brown came up and announced a \$30 million aid package. We are looking forward to the first disbursement hopefully within the next week or so.

To turn around and say these fishing families have to come back with a fee, when they cannot even afford to survive as it is, does not make sense. I think that alternatives must be explored.

I am also concerned about provisions on the alternative bill my colleague sponsored dealing with highly migratory species such as the bluefin tuna. I think it is very important that while we are dealing with international law, we do not give fishing Councils the right to attempt to supersede international law.

Those points are more detailed in my statement. I thank the Chair for having this series of hearings. They are extremely important.

The Magnuson Act, while far from perfect, has offered some protection and I hope that we pass an improved Magnuson Act this year.

Mr. MANTON. The gentlelady from Washington, Ms. Cantwell.

**STATEMENT OF HON. MARIE CANTWELL, A U.S.
REPRESENTATIVE FROM WASHINGTON**

Ms. CANTWELL. Thank you, Mr. Chairman. I do appreciate you holding this hearing.

As we look at the Administration's proposal to reauthorize the Magnuson Act and also hear from Congressman Gilchrest about his Marine Fish Conservation Amendments of 1994 and H.R. 4404, I cannot overemphasize the State of Washington and my district.

Clearly H.R. 4430 demonstrates the Administration's desire to make the Magnuson Act reauthorization reality in this Congress. Although this legislation is not perfect, it is a significant starting point.

In addition, the introduction signals, I think, an important role for conservation issues in this reauthorization process.

We need to continue to make great strides, however, in this reauthorization. The fishing industry in my State is in significant trouble. Shortened seasons and limited access are causing bankruptcies throughout the region.

Because of the state of the Northwest Fishing fleet, I have concerns about the impact of the Administration's proposed user fees. We must take concrete steps to create a stable economic environment for the industry before we start assessing fees that the industry cannot sustain.

The continued perception of conflict of interest on the Fishery Management Councils must be addressed in the reauthorization. Although the Administration bill takes important strides toward addressing the conflict of interest, I believe that additional measures must be implemented.

I look forward to hearing from Doug Hall to further explore the Administration's proposal on the reauthorization of the Magnuson Act and I look forward to having a strong comprehensive bill that moves through the process in a timely fashion so that this important industry, not only to the Northwest, but to the entire country, is preserved.

Mr. MANTON. The Chair will move to the other side of the aisle for additional opening statements.

Mr. Callahan, not a member of the Committee, is with us today. I know Mr. Gilchrest would like to be the cleanup hitter, so we will hear from Mr. Callahan and then go back to our side again.

**STATEMENT OF HON. SONNY CALLAHAN, A U.S.
REPRESENTATIVE FROM ALABAMA**

Mr. CALLAHAN. Thank you, Mr. Chairman.

It is good to be back with this Committee. I am sorry to be here defending the shrimping and fishing industry on the Gulf of Mexico, but am happy to hear what I am hearing from the members of your Committee. It seems to me a lot of people support my view that they do not want these user fees imposed.

Mr. MANTON. Without objection, so ordered.

Mr. CALLAHAN. I suggest to Mr. Hall, due to the vast opposition that he has on this, if he would drop this user fee, it would make all of our lives, including his, a little easier.

Mr. MANTON. I thank the gentleman. Straight and to the point. Anybody on the Democratic side seek recognition?

We will move to our last statement. Mr. Gilchrest will make his statement as part of the testimony he would have given if he had been at the witness table, if I understand it correctly.

**STATEMENT OF HON. WAYNE GILCHREST, A U.S.
REPRESENTATIVE FROM MARYLAND**

Mr. GILCHREST. Yes, sir.

I thank the chairman for allowing me on such short notice to come and be a part of this Subcommittee and also to give testimony on our bill.

I have a fairly lengthy testimony that I will shorten as I go through it after listening to the opening remarks by a number of my colleagues and I do want to emphasize that the main focus of this bill is to prevent overfishing to ensure a long-lasting stable fishing industry for both the commercial fisheries and the recreational fisheries.

So I would like to be a part of the debate up through the markup.

I will summarize briefly the part about overfishing. I am sure over the last several weeks and perhaps even months you have heard a number of telling stories about the depletion of stocks in the coastal waters of the United States. So what I would like to do is begin with an example of what happened in my district with what we call rockfish or striped bass, because I think it is a perfect example that is relevant to this particular reauthorization.

The striped bass or rockfish moratorium in the State of Maryland is an example of a tough choice which had to be made in non-Federal waters. I believe that the 1985 moratorium on striped bass for the State of Maryland serves as a model for other fishery resources.

Through cooperation and vision, several States followed Maryland's example and considered the long-term importance of rebuilding the resource instead of short-term losses.

With certain management activities, in other words, there is a restricted harvest and there is continued research and there is habitat protection, rockfish in the State of Maryland has now been officially declared recovered.

I think this is as a result of an effort on the part of the Federal and State Governments. Overfishing should never be allowed to continue because of short-term economic reasons. This approach simply does not make sense and is unfair in my opinion to fishing interests.

As you are aware, the Magnuson Act does not define overfishing, but optimum yield is defined as a maximum sustainable yield modified by any relevant economic, social or ecological factor. This modification provides the rationale for, I believe in certain instances, any level of fishing.

H.R. 4404 requires that biological and ecological factors take priority over economic factors in decisionmaking to ensure long-term sustainability of the resource. I think if we hadn't done this in Maryland with the rockfish, we would not have a recovered species.

I talked to the Secretary of Natural Resources for the State of Maryland and he says within two years they will double the take that commercial watermen can make. In turn, the fisheries economy, as a result of conservation, will be protected.

Mostly H.R. 4404 prohibits overfishing, requiring each management plan to contain an objective and measurable definition of overfishing consistent with the statute, but tailored to the fish populations covered by the plan. It also requires that when overfishing is found to be occurring, the Councils prepare a recovery plan featuring the specific rebuilding goal and timetable for achieving that goal.

I think, depending on the species, the timetable can vary.

We also address fish habitat. Besides overfishing, habitat destruction and human population growth have all contributed to our national and global fisheries crisis. Fish depend on coastal rivers, bays, salt water marshes, mangrove swamps, sea grass meadows, offshore reefs, hard bottom areas, and other types of marine habitat for migratory pass, for critical breeding nursery, and feeding ground.

We know that 50 percent of the population of the United States lies within 50 miles of our coastline. We have all heard stories about losing 50 percent of our wetlands in the last 200 years and we know that wetlands, and I can speak for my area, is an essential habitat for spawning grounds for fish.

Seventy-five percent of the commercial landings of the ocean fish are dependent on in-shore habitat. Commercially valuable fish depend on coastal wetlands for some portion of their lifestyle.

My bill would elevate the level of marine fish habitat protection within the National Marine Fisheries Service and would amend the Act to require that other Federal agencies respond to habitat concerns raised by the fishery management councils.

Most importantly H.R. 4404 gives the Secretary of Commerce authority to insist that all Federal actions affecting the important fish habitat be subject to review by the Secretary to determine their consistency with the objectives of fishery management plans written under the Act.

Simply put, if the Councils and NMFS are not given a stronger voice in habitat issues and if enough important habitat is destroyed, any conservation effort that we take in my judgment will be irrelevant.

The National Research Council has recently issued a report dealing with the fisheries in the United States and one line is fairly striking to me out of that report. They say, "Even the cessation of all fishing activities will not guarantee future stocks if there are inadequate habitats to support fish reproduction and growth."

According to NOAA, on any given day, one third of the United States shellfish beds are closed due to contaminated water.

We deal with a bycatch which is an extremely controversial issue, but it is an issue in this reauthorization that has to be addressed.

According to the President's Council on Environmental Quality, bycatch has contributed to an 85 percent decline, and I say this with all sincerity and respect to my colleague from the Gulf of Mexico, bycatch has contributed to an 85 percent decline in the Gulf population of bottom fish such as snapper and grouper during the past 20 years.

The United States needs a national policy to reduce bycatch to the lowest practical level. H.R. 4404 provides terms and definitions to characterize bycatch and create a framework through which bycatch problems can be resolved in fishery-managed plans.

Prevention of bycatch must be the ultimate goal of our plan if we are to maintain the biological community structure of the ocean ecosystem.

H.R. 4404 provides a new national standard on reducing bycatch and requires the use of selective gear which minimizes mortality. It requires the Councils in cooperation with NMFS to develop programs with a sufficient level of incentives and disincentives to encourage participation of all fishing boats in bycatch measurement and reduction efforts, while requiring participation of those boats with bycatch levels above a certain threshold.

Management Council reform is a part of our amendment process. The Management Council system (the eight Management Councils), in my opinion, is the cornerstone of the Magnuson Act. Including recreational commercial fishing interest on the Council is an important component of the management scheme; yet individuals which are nonusers of the resource are very often unrepresented.

H.R. 4404 would ensure a fair representation of the broad public interest among Council membership by designating no less than 25 percent of the voting member seats for nonusers.

More importantly, under my bill, the Councils would begin to operate more objectively by following conflict-of-interest standards similar to those required of other quasi-Federal regulatory bodies.

H.R. 4404 would prohibit members from voting on issues in which they have a financial interest, which is pretty much the way it is now. The bill would also authorize the Secretary to remove any Council member for violating disclosure and conflict-of-interest provisions and provide the Secretary with the authority to reject the plan or amendment whose passage was contingent on a conflict-of-interest vote.

Highly migratory species: The population of highly migratory bluefin tuna, swordfish, marlins and others have declined by 50 to 90 percent in the past 20 years. Recent amendments to the Magnuson Act forbid U.S. regulations from being more restrictive than those agreed to by the International Commission for Conservation of Atlantic Tunas.

Even when those measures were effective, I believe this hinders our ability to use wise management in our own waters.

H.R. 4404 would repeal language limiting U.S. authority over highly migratory species, as does the Administration's bill.

It would also repeal language transferring U.S. authority from the Atlantic Councils to the Secretary, at the same time amending the Act to facilitate preparation of multi-Council plans.

Denying the Atlantic Council's management of these important fisheries has significantly reduced public input into the management process and accountability of fishery managers to the public.

The last thing in our bill deals with user fees, which I know is another one of those controversial issues, especially when you are dealing with marginal economic success on the part of a number of watermen and fishermen.

Like the Administration proposal, the bill will abolish the limitations on Magnuson on collection of fees for permit administrative purposes only. These fees would go directly to the regional Councils and could only be applied to fishery research and enforcement activities with emphasis on at-sea observer programs.

The status of more than a third of the species under Magnuson jurisdiction is unknown. Increased funding will improve our knowledge of fish and their role in the ecosystem, leading to more effective and efficient management.

I do want to say that each Management Council will have the option to raise a user fee or not to raise a user fee. It could be a wholesale user fee or it could be an ex-vessel user fee. In our user fee plan, we modeled it after the North Pacific Research Plan which included in it a user fee plan.

The Councils retain the authority over these fees.

In conclusion, I would like to say that too many of our Nation's commercial and recreational fisheries are decompleted or in decline, producing far below the biological potential.

With each year, new species are added to the growing list of overfished. Efforts to restore populations have been slow and in some cases ineffective. The price we are paying for poor management is more than we can afford.

I am hopeful that by focusing the debate around this bill and other proposals such as H.R. 4430, we can make significant strides toward protection of these invaluable resources as well as to maintain the traditions of the United States fishing industry.

I thank you once again, Mr. Chairman, for allowing me to testify and I was reading a magazine called the Economist, a couple of months ago when we started the process.

There are two things that I got out of that—there are a lot of things I got out of that article. One was the urgency to reauthorize the Magnuson Act, and I appreciate the fact that I can be a part of that. The other is a quote that said, "Do not blame fishermen for overfishing. They are behaving rationally, as they have always

done... Blame instead those who have power over the fleets, and who have taken the sea into their custody: the Government."

Thank you very much, Mr. Chairman.

[The prepared statement of Mr. Gilchrest follows:]

STATEMENT OF HON. WAYNE GILCHREST, A U.S. REPRESENTATIVE FROM MARYLAND

Thank you, Mr. Chairman and my colleagues on this Subcommittee for allowing me at such late notice to speak before you about my bill, H.R. 4404, the Marine Fish Conservation Amendments of 1994. As you may know, my bill currently has 50 co-sponsors. Members are learning more about such things as fisheries, bycatch, and the Magnuson Act. The entire country is learning about the significance of our ocean ecosystem and fish resources.

OVERFISHING

Let me begin today by describing the essence of my bill—to stop overfishing. Members of this Subcommittee are especially aware of the examples of rampant fishing abuses across this country. I believe that you are probably all too familiar with the fish population statistics.

According to the United Nations Food and Agriculture Organization, since 1989, we have experienced a consecutive 3-year worldwide fisheries decline. Stocks in 17 major fishing regions are seriously depleted, while catches in nine others are declining. More than 40% of the Nation's 213 ocean species are overfished and 14 of the most valuable ones—like haddock and Atlantic bluefin tuna—are threatened with commercial extinction.

We simply cannot maintain the status quo on fisheries management. The Committee's work on reforming Magnuson demonstrates your recognition of this fact.

A perfect example of the overfishing issue relevant to my district comes to mind. The striped bass or rockfish moratorium in the State of Maryland is an example of a tough choice which had to be made in non-Federal waters. I believe that the 1985 moratorium on striped bass serves as a model for other fishery resources. Through cooperation and vision, several States followed Maryland's example and considered the long-term importance of rebuilding the resource instead of short-term losses. Now, with restricted harvests, continued research and habitat protection efforts, the rockfish population is now officially declared recovered.

Overfishing should never be allowed to continue because of short-term economic reasons. This approach simply does not make sense and is unfair to fishing interests. As you are aware, the Magnuson Act does not define overfishing, but optimum yield is defined as the maximum sustainable yield, "modified by any relevant economic, social, or ecological factor". This modification provides the rationale for any level of fishing.

H.R. 4404 requires that biological and ecological factors take priority over economic factors in decision-making to ensure long-term sustainability of the resource. In turn, the fisheries economy will be protected. Most important, H.R. 4404 prohibits overfishing, requiring each management plan to contain an objective and measurable definition of overfishing consistent with the statute, but tailored to the fish populations covered by the plan. It also requires that when overfishing is found to be occurring, the Councils prepare a recovery program featuring the specific rebuilding goal and timetable for achieving that goal.

FISH HABITAT

Besides overfishing, habitat destruction and human population growth have all contributed to our national and global fisheries crisis. Fish depend on coastal rivers, bays, salt marshes, mangrove swamps, seagrass meadows, offshore reefs, hardbottom areas, and other types of marine habitat for migratory paths and critical breeding, nursery, and feeding grounds. With 50 percent of the U.S. population living within 50 miles of the coast and over 50 percent of our wetlands base destroyed in 200 years, we must begin the massive task of identifying essential fishery habitat and protecting that habitat.

Seventy-five percent of commercial landings of marine fish depend on in-shore habitat. Commercially valuable fish depend on coastal wetlands for some portion of their life cycle.

My bill would elevate the level of marine fish habitat protection within NMFS and would amend the Act to require that other Federal agencies respond to habitat concerns raised by the Fishery Management Councils. Most important, H.R. 4404 gives the Secretary of Commerce authority to insist that all Federal actions affecting im-

portant fish habitat be subject to review by the Secretary to determine their consistency with the objectives of fishery management plans written under the Act.

Simply put, if the Councils and the NMFS are not given a stronger voice on habitat issues and if enough important habitat is destroyed, any conservation efforts we take here will be irrelevant. The National Research Council has said that, "even the cessation of all fishing activities will not guarantee future stocks if there are inadequate habitats to support fish reproduction and growth". According to NOAA, on any given day, one-third of the United States' shellfish beds are closed due to contaminated water!

BYCATCH

The next issue which must be addressed during this reauthorization is the bycatch issue. According to the President's Council on Environmental Quality, bycatch has contributed to an 85 percent decline in the Gulf population of bottom fish such as snapper and grouper during the past 20 years.

The United States needs a national policy to reduce the bycatch to the lowest level practical. H.R. 4404 provides terms and definitions to characterize bycatch and create a framework through which bycatch problems can be resolved in fishery management plans. Prevention of bycatch must be the ultimate goal if we are to maintain the biological community structure of the ocean ecosystem.

H.R. 4404 provides a new national standard on reducing bycatch and requires the use of selective gear which minimizes mortality. It requires the Councils, in cooperation with the NMFS, to develop programs with a sufficient level of incentives and disincentives to encourage participation of all fishing boats in bycatch measurement and reduction efforts, while requiring participation of those boats with bycatch levels above a certain threshold.

MANAGEMENT COUNCIL REFORM

Another major issue which must be addressed includes the Regional Fishery Management Council System, a cornerstone of the Magnuson Act. Including recreational and commercial fishing interests on the Council is an integral component of the management scheme, yet individuals who are non-users of the resource are consistently under-represented. Imagine if the new grazing committees being established in the West consisted of no conservationists or rangeland scientists. H.R. 4404 would ensure a fairer representation of the broad public interest among Council membership by designating no less than 25 percent of the voting member seats for non-users.

More important, under my bill, the Councils will begin to operate more objectively by following conflict-of-interest standards similar to those required of other quasi-Federal regulatory bodies. H.R. 4404 would prohibit members from voting on issues in which they have a financial interest. The bill would also authorize the Secretary to remove any Council member for violating disclosure and conflict-of-interest provisions, and provide the Secretary with the authority to reject a plan or amendment whose passage was contingent on a conflict-of-interest vote.

HIGHLY MIGRATORY SPECIES

The populations of the highly migratory bluefin tuna, swordfish, and marlins have declined 50 to 90 percent in the past 20 years. Recent amendments to the Magnuson Act forbid U.S. regulations from being more restrictive than those agreed to by the International Commission for the Conservation of Atlantic Tunas (ICCAT), even when those measures are ineffective. I believe this hinders our ability to use wise management in our own waters. H.R. 4404 would repeal language limiting U.S. authority over highly migratory species as does the Administration's bill.

It would also repeal language transferring U.S. authority from the Atlantic Councils to the Secretary, at the same time amending the Act to facilitate preparation of multi-Council plans. Denying the Atlantic Council's management of these important fisheries has significantly reduced public input into the management process and accountability of fishery managers to the public.

USER FEES

Finally, my bill would allow an optional user fee scheme to be utilized by the Fishery Management Councils if they deem necessary. Like the Administration's proposal, the bill will abolish the limitations in Magnuson on the collection of fees for permit administrative purposes only.

These fees would go directly to the Regional Council and could only be applied to fishery research and enforcement activities, with emphasis on at-sea observer programs. The status of more than a third of the species under Magnuson Act jurisdiction is unknown. Increased funding will improve our knowledge of fish and their role in the ecosystem leading to more effective and efficient management.

In conclusion, I would like to say that too many of our Nation's commercial and recreational fishes are depleted or in decline, producing far below their biological potential. While each year new species are added to the growing list of those overfished, efforts to restore depleted populations are slow and ineffective. The price we are paying for poor management is more than we can afford.

I am hopeful that by focusing the debate around this bill and other proposals such as H.R. 4430, we can make significant strides toward protection of these invaluable resources as well as maintaining the traditions of the United States' fishing industry.

I look forward to working with my fellow members of the Fisheries Subcommittee as well as the Full Committee on the reauthorization of Magnuson Fishery Conservation and Management Act. I commend Congressmen Manton and Young for their leadership on this front.

I would like to end by quoting from an article in the *Economist*:

"Do not blame fishermen for overfishing. They are behaving rationally, as they have always done... Blame instead those who have power over the fleets, and who have taken the sea into their custody: the Government."

Mr. MANTON. I thank the gentleman and recognize Mr. Hughes from New Jersey.

STATEMENT OF HON. WILLIAM J. HUGHES, A U.S. REPRESENTATIVE FROM NEW JERSEY

Mr. HUGHES. I thank the chairman. I would like to submit a statement for the record if I might.

Mr. MANTON. Without objection, so ordered.

Mr. HUGHES. Let me congratulate the gentleman for moving ahead with these hearings leading to reauthorization of the Magnuson Act.

One of the things I am most proud of is the fact that in my freshman term, I was privileged to work in helping to draft and pass the Magnuson Act in 1976, as I recall, and it is important that we attempt to strengthen it. I support many of the recommendations that I have seen thus far that I trust thereby in the chairman's mark.

Let me just put a shot across the bow of the user fee proposal. I can tell you that in my district it would be absolute revolution if we proposed a user fee, much akin to the Boston Tea Party.

I have fishermen that are trying to stay alive economically. In fact, many of them receive emergency aid to stay alive. Much of the quahog and clam industry is located in my southern New Jersey district, and they have had very, very difficult times.

Any proposal that would at this point attempt to remove that ban on user fees in existing legislation I think would be very difficult to achieve. I just hope that we come to our senses.

Anybody that thinks that user fees have worked ought to look at the Coast Guard user fee proposal and see what our track record has been there. It has been abysmal, and to think that we could impose user fees on fishermen that are having a difficult time and the recreational fisheries is ludicrous.

I hope that we can move on to more productive areas.

I thank the chairman.

Mr. MANTON. I thank the gentleman.

We will now go to our other panel and call the honorable Douglas K. Hall, Assistant Secretary for Oceans and Atmosphere, National Oceanic and Atmospheric Administration, who is joined by Rolland Schmitten, head of the National Marine Fisheries Service.

STATEMENT OF HON. DOUGLAS K. HALL, ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE; ACCOMPANIED BY ROLLAND SCHMITTEN, ASSISTANT ADMINISTRATOR OF FISHERIES, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. HALL. Thank you, Mr. Chairman.

I am Doug Hall, Assistant Secretary for Oceans and Atmosphere of the Department of Commerce. With me is Rolland Schmitten, the Director of the National Marine Fisheries Service.

I appreciate the opportunity to appear here today and testify on the Administration's proposals to amend the Magnuson Act.

I would like to thank you, Mr. Chairman and Chairman Studds, for introducing the Administration's proposals and we look forward to working with you and other members of the Subcommittee on this important piece of legislation.

As Congressman Gilchrest indicated, the status quo is simply not satisfactory. We face a crisis in the Nation's fisheries. The situation in New England is only the most visible situation that we face around the country. Throughout the country and along the Nation's coastlines, we face very difficult situations.

We have closed the ocean salmon fishery along the coasts of northern California, Oregon and Washington for this year. Forty-three percent of the species of fish in the Nation are overfished. This is a situation that cannot be allowed to continue and we are committed to changing the situation.

Haddock, which used to be the mainstay of the New England fishery, is now commercially extinct in the Gulf of Maine. I think that is a record that we are not proud of, and we want to change this. Our proposal is a step in that direction.

As a number of members of the Committee have pointed out, the most controversial element of our Magnuson Act reauthorization proposal is user fees. I would like to go into some detail on that in a few moments, but first I would like to talk about the other elements in our bill.

The amendments address the conservation of marine fisheries in several ways. First, the current requirement to prevent overfishing would be amended to ensure that stocks are rebuilt should they become depleted. It is simply not enough to stop overfishing when stocks are at unacceptably low levels.

A related amendment would require action within one year by the Councils to prevent a stock from becoming overfished or to end an overfished condition. If action is not taken by the Councils, the Secretary of Commerce would be required to address the situation.

I have been frustrated in my short tenure with the Department of Commerce about how long it takes to act on some of these very difficult situations. If the situation regarding groundfish in New

England had been addressed 15 or 20 years ago, when we recognized that there was beginning to be a serious problem, the economic basis for dozens of communities in New England would have been preserved and we wouldn't be facing the crisis that we are facing today.

A new national standard requiring measures to minimize bycatch would be added by the amendments. The amendments emphasize the importance of habitat protection by requiring the Councils to identify areas that are essential to the continued production of fisheries under their management.

The amendments would improve the way fisheries are managed. The Councils would prepare proposed regulations incorporating all management measures instead of having to go through the time-consuming process of amending a plan.

I think a number of Councils are frustrated by how long it takes to act and how difficult it is to respond to a very difficult situation—even when there is agreement among the industry and the Council members on the action that should be taken—and we propose to fix that.

The perception of or the potential for conflicts of interest on the Councils is very real. It is one of the issues that we have heard more about than perhaps any other issue—mostly from the industry itself. We have proposed an amendment that would forbid a member with a financial interest that would be significantly affected by a Council decision from participating in the decision unless granted an authorization by the NMFS Regional Director.

In recognition of the increasingly important role of Indian tribal representatives on the Pacific Council, the amendments would provide an additional obligatory seat on the Pacific Council for a representative of Indian tribes of California, Oregon, Washington or Idaho that have federally recognized fishing rights.

To address the need for better scientific information for decision-making, the amendments would provide the Secretary with the authority to implement uniform mandatory recordkeeping and reporting requirements for all fisheries. The lack of such a program has resulted in varying requirements for data, some related to fishery management plans and some not, that are not integrated with each other.

Now I would like to talk about user fees. In the past couple of decades, there has been a growing gap between the responsibilities of our Nation's fishery managers and the managers' ability to carry them out. The budgets in the current fiscal climate have not kept pace with the demands placed on the National Marine Fisheries Service and the user fee proposal that we have put forth is an attempt to provide a stable funding base for our Fisheries Service.

The National Performance Review recognized that private parties should pay for the commercial use of public fishery resources, particularly where the Federal Government provides general or specific services. A number of other resource-based industries such as timber, minerals, oil and gas, and grazing pay fees today. The Nation's fisheries are one of the few natural resources that are managed by the Federal Government where fees are not paid.

Currently, the Act allows only for the collection of administrative costs of issuing permits. Expansion of current fees is necessary to

ensure a return to the Nation for the use of these public resources and provide needed resources for the adequate management of marine fisheries.

As I have mentioned, we lack funding in the National Marine Fisheries Service to carry out our mission properly. We do not know the status of approximately one-third of the Nation's fishery resources.

No recreational fishing survey has been conducted off the coasts of California, Oregon and Washington for a number of years. In Alaska, the National Marine Fisheries Service is only able to conduct a survey of groundfish stocks only once every three years—and this is one of the Nation's largest fisheries.

On the East Coast, the implementation of groundfish, scallop, and lobster amendments is straining NMFS' resources. Similarly, implementation of a limited entry program for groundfish off California, Oregon and Washington, and the halibut and sablefish IFQ off Alaska both require a greater commitment of resources to ensure their effectiveness.

We estimate that it will cost about \$3 million a year to administer the one new IFU program in Alaska alone. If you multiply that times the number of other ITQ programs being considered around the country, we face a very difficult financial situation that will get worse in future years.

Enforcement of these programs, as well as the ongoing programs, is also of concern. We have no enforcement agents permanently stationed in the State of New York. We only have two agents for the entire State of Texas. For the first time, funding for the management of important highly migratory species that range up and down the East Coast are included in the President's budget.

Our fee proposal has four elements: First, the establishment of user fees above administrative costs for any permit issued under the Act.

Second, establishment of a 1 percent levy on the value of fish and shellfish at the point of first sale. A 1 percent fish levy on both domestic and imported fish assures that the proposed fee is consistent with the General Agreement on Trade and Tariffs (GATT).

Third, establishment of a 3 percent annual fee on the value of fish allocated under individual harvest shares, such as ITQ programs.

Fourth, establishment of a fee on vessels to cover the costs of special management measures, such as observers, that directly benefit specific fisheries and fishermen.

The funds collected under this proposal will be used for the conservation and management of marine fisheries, and that is different from the fee proposals that have been put forth in past years where the funds went only for deficit reduction. One very significant use of the funds would be to reduce harvesting capacity in overfished fisheries.

Congressman Pallone and others asked how we could consider raising fees at a time when the fisheries are in financial distress. We believe that we are sensitive to this. The Administration is providing significant financial resources to deal with this problem. We have committed \$30 million in funds for New England to deal with the crisis there. We have provided \$16 million in funds to deal with

the crisis in the Pacific Northwest. But the industry also has to help in providing the financial resources needed to deal effectively with this problem.

It will be a shared responsibility and that is the only way that we will be successful. In this particular aspect of our fee proposal, when a fishery is in distress, the 1 percent fee collected would go into a special fund to buy back vessels in that particular fishery. In this way, it would enhance the economic value of that fishery for the fishermen who remain, and it is a key part in stabilizing our fisheries and reducing the number of vessels in the overcapitalized fisheries.

The proposed levy on ITQ programs does not suggest a shift in our policy regarding this type of management. Rather, the proposed fee is in recognition of the additional costs of this type of management and the additional benefit of individual harvesting rights that fishermen receive.

We continue to believe that the decision to develop and implement an ITQ program rests with the affected industry and Regional Councils.

Mr. Chairman, we are committed to working with the Congress to secure passage of a user fee proposal that is equitable to all resource users and provides the resources necessary to manage comprehensively our Nation's marine fisheries.

A number of the members of the Committee are right to point out the difficulty in raising fees. We are well aware of that. We face some difficult choices. We know that financial resources are limited in this government. We have to deal with these problems forthrightly today.

The real threat to the financial security of fishermen in this Nation is not a user fee. The real threat, we believe, is the continued erosion of our Nation's fisheries, the stocks continuing to be depleted, the failure to act aggressively to deal with the situation, and the economic destruction of hundreds of coastal communities around our country.

We are committed to seeing that that doesn't happen and we are anxious to work with you and other members of the Committee to make sure that we have an effective program that deals with these issues.

I have a written statement that provides some greater detail which I would like to have included in the record.

Mr. MANTON. Without objection, so ordered.

Mr. HALL. Mr. Schmitt and I would be glad to answer questions at this time.

Mr. MANTON. Thank you, Mr. Secretary.

[The statement of Mr. Hall can be found at the end of the hearing.]

Mr. MANTON. With regard to user fees, I was under the impression these funds were going to be put in a dedicated account. I suspect that was something changed at OMB and that is why I wanted an OMB witness here today.

Since they declined our invitation to testify, can you tell us why the Administration abandoned the dedicated account approach?

Mr. HALL. The funds would be dedicated in the sense that these funds would go directly into the operation facilities (ORF) account

in NOAA and not to the Treasury. The Administration has requested a very significant increase for the National Marine Fisheries Service that accompanies this fee proposal.

The mechanics of dealing with a dedicated fee are very difficult. I think this comes as close as we have ever seen to a proposal where we have a dedicated use of these funds. We believe that it meets the objective that we have set forth in our proposed legislation.

Mr. YOUNG. Will the gentleman yield?

Mr. MANTON. I will be happy to yield.

Mr. YOUNG. If I hear you correctly, you say this is a dedicated fee, but the money is going to the general fund and they have to be appropriated by the Congress.

Is that correct?

Mr. HALL. That is correct.

Mr. YOUNG. We are doing what we have done before. There was an established dedicated fee, yet the Congress takes \$50 million a year and spends it on other projects than what originally collected for.

I think that is the objection. You say dedicated. This is great, but in reality, it is not dedicated. They can appropriate that amount of money and put it anywhere they want to.

Mr. HALL. I think that it is subject to appropriation by Congress, but the funds would go into the ORF account in NOAA. We would not have leeway to spend it on other items.

Mr. YOUNG. There is nothing to prohibit it. It has to go through the appropriation process. My point is, I don't think you would have much objection to the fee from the fishermen if we knew, for instance, in Alaska that money we collected from our fishermen and our fleet would go into rehabilitation and restocking and preservation of the species. That is not going to happen just because you have dedicated.

It will not occur. The money will not be spent there. I am not going to buy that, Mr. Chairman. If it goes directly to that area, the area in which it is collected and doesn't go through this process, then I don't think you would have much objection even from the fishermen.

Mr. HALL. That is our intent and we are willing to work with the Committee to make sure we accomplish that intent.

Mr. MANTON. Reclaiming my time.

I will have to claim the Ranking Member's time. So, he is finished for the day.

Let me understand this. The funds you say are dedicated, but they go to NOAA, not necessarily to NMFS? Can they be used for other NOAA projects?

Mr. HALL. The use is specified in the language as being for fishery management activities.

Mr. MANTON. Under H.R. 4430, if a charter boat operator were to sell fish caught by his customers, would that sale be subject to the 1 percent fee?

Mr. HALL. Yes. If a charter boat who caught fish and was selling it commercially to a fish dealer, yes, sir, those would be subject to the fee.

Mr. MANTON. Does the Administration anticipate the collection of user fees for fish caught in State waters or for farm-raised fish?

Mr. HALL. Yes, in both cases.

Mr. MANTON. H.R. 4430 sets limits on the amount of user fees the Secretary shall impose, 1 percent of the ex-vessel value of fish sold in the United States and up to 3 percent of the value on limited entry shares. If the system were in place today, would the Secretary assess the maximum allowed?

Mr. HALL. Our intent is to put this system of user fees in place as quickly as possible and to meet the fiscal requirements of the President's budget; we anticipate raising somewhere in the neighborhood of \$88 million. The actual amount that would be raised is somewhat more than that, about \$94 million, but, depending on what Congress decides on this issue, we would do our best to raise the amount that is specified in the appropriations bills and in the authorizing bills passed by Congress.

Mr. MANTON. On ITQ's, some witnesses have expressed concern that limited access fisheries could lead to a consolidation of economic power in the hands of too few fishermen or processors. Does the Administration believe that fishermen who acquire ITQ harvest shares are subject to normal antitrust laws; and, if so, are these laws sufficient to prevent unfair consolidation?

Mr. HALL. We certainly believe that all businesses, including those in the fishing industry, are subject to antitrust laws. The Fishery Management Councils have great leeway to decide what restrictions they will place on the individual fishing quotas. There are restrictions being considered in Alaska that would prohibit the consolidation of permits under some circumstances. I think those are decisions that are best left to the Councils and that the members of the industry can work together through the Council process to deal with those issues.

Mr. MANTON. On the issue of conflicts of interest, H.R. 4430 proposes amendments to address the potential for conflict of interest in Council decisions. Will your current round of appointments to the Councils reflect this deep concern for potential conflicts of interest?

Mr. HALL. Mr. Chairman, we have taken that into account in considering the nominees from the governors during this round of appointments. The current guidelines that we are using to appoint members and that the governors have used in selecting their nominees require representation of various interested parties, including those in fisheries affected by these management decisions. We are not proposing that they cannot participate in the Council process, only that they cannot participate in those specific decisions that affect their financial interests. There are a number of proposals on the table to prohibit people from even serving on the Council and we are not going that far.

Mr. MANTON. My time has expired.

The Chair recognizes the Ranking Member, Mr. Young.

Mr. YOUNG. I will yield you one minute if you would like to have it.

Mr. MANTON. I would rather turn it over to you, so you don't interrupt me again.

Mr. YOUNG. I am going to try to stay away from the fee structure. If the answer was correct to the chairman, you plan on imposing a fee on catfish in Mississippi.

Mr. HALL. No. This would only be for marine species.

Mr. YOUNG. It doesn't say that in the bill.

Mr. HALL. That is the intent. Only marine species.

Mr. YOUNG. Under Alaskan law, the salmon that originate in Alaska are owned and managed by the State, and my understanding is, you will propose a tax against those fish that are not caught in Federal waters; is that correct?

Mr. HALL. That is correct.

Mr. YOUNG. That is not going to happen, but that is what they are proposing by the way.

Mr. Hall, in your rewrite of this proposal, you remove the requirement that Secretary cannot accomplish limited access systems without the approval of the Council. Now why did that occur?

Mr. SCHMITTEN. Mr. Chairman, our approach to limited entry is different than you have probably seen in the past and the philosophy has been to allow the user groups to be a part of decisionmaking of whether or not to go with limited entry.

The government's role in that is to support the users if they choose to work through the Council system, and to provide the necessary information that is needed to make sure what comes out is ultimately approvable. So the answer is that we want the Councils to invest in this system. That is where limited entry ITQ's, if you have it, should work.

Mr. YOUNG. In your proposal, you eliminate the Council. Right now it has to go back to the Council if you propose a limited entry process.

I just heard you say you want the Councils' involvement. I am very suspicious of some of the people promoting this legislation—not you. There are those promoting this legislation who want to make it a fish czar.

If the Secretary wished to get into the limited entry process now, he can propose that. It goes back to the Council. In your proposal, you eliminate the Council. The Secretary can come in with a limited process and state it, and I don't understand why.

Mr. SCHMITTEN. Mr. Chairman, let us get back to you because that must be in the management plans and the streamlining process.

Mr. YOUNG. Fine.

Mr. SCHMITTEN. We are looking at several different sections, but the purpose is just the opposite and I hope Mr. Young understands; we want to give the Councils more flexibility to framework, to make decisions on a timely basis to help the fishermen.

Mr. YOUNG. That is what we want to do. You have readdressed the three areas. We have now the framework to do what you are suggesting, but the way it has been written—I want to suggest that I think I can see the very deep fingerprints of some people I have known for many years that have a philosophy up here that is contrary to what you are saying.

You give the Councils one year to meet your new system, one year, or face having their existing plans effectively made void. That

gives the Secretary total management over the fisheries and the key to the Magnuson Act was the strength of the Councils.

Now I don't think you intended that in your proposal.

Mr. HALL. Congressman Young, let me go back to your first question, because I think the intent of the streamlining proposal was not to shift the balance of power from the Councils to the Secretary or vice versa, but to maintain the status quo in terms of the role of each; but instead to streamline it to make it more effective.

If that does not accomplish that intent in their language, we should meet with you and your staff to try to deal with it.

Mr. YOUNG. I think you are coming from the right direction, but I respectfully suggest maybe you haven't looked in deep depth where their proposal goes. I interpret it that in fact if the Council doesn't approve what you have said, you take over management of the whole fisheries in that area.

Mr. HALL. That was not what was intended.

Mr. YOUNG. Second, you delete a key portion of the drift net section of the Act which allows the Secretary to certify drift net fishing nations under the Pelly amendment. I don't know why you would affect the Pelly amendment.

Mr. HALL. There were three parts in the attempt to improve our enforcement of the high seas driftnet issue. One was to extend our authorities beyond the 200 miles, beyond the EEZ for flag-State nations that participated in the treaty; second, to have a rebuttable presumption for those vessels within our EEZ that if they have driftnet gear aboard, it is assumed they are fishing with driftnet.

The third is to drop the provision on reporting. We do report before the United Nations, and we will continue to do that. We felt it was redundant to have two reports and we felt that was sufficient.

Mr. YOUNG. But you dropped it out of your suggestion.

Mr. HALL. Yes, that we would not report because we are still reporting to the United Nations; once the U.N. resolution was passed, we felt that we could provide that report to you and simply remove a redundancy.

Mr. YOUNG. My time is up and I thank you for the time. I am going to try to sit down with you and show you where I think how this has been drawn up, where it has some very large holes, and those holes have to be addressed or you are in serious trouble.

Mr. HALL. We would certainly welcome that.

[The information was submitted following the hearing.]

Mr. Young stated that several provisions of the current Magnuson Act had been deleted from the Administration's bill: (1) the condition that the Secretary may not implement a limited access system without the approval of the Council; (2) the requirement that the Council initiate rulemaking in most circumstances; and (3) a portion of section 206 that allows the Secretary to certify a driftnetting nation under the Pelly amendment.

(1) The Administration's bill does not delete the condition that a majority of the Council must approve a limited access system; it appears as section 303(c)(9)(B) on page 21 of H.R. 4430. (The exception for highly migratory fisheries managed by the Secretary preserves the status quo, since the current restriction does not apply to fisheries managed under 304(f)(3).)

(2) The "streamlining" proposal in the Administration bill does not alter the roles of the Councils or the Secretary. The transition provision (section 303(b), pages 15-16 of H.R. 4430) encourages the Councils to replace FMPs with "new" plans under the streamlined format, where conservation and management measures appear only in the rules, not in the FMPs. It recognizes, however, that Councils have limited

resources and may not be able to revise all their FMPs. If that is the case, after 1 year, their unrevised FMPs would be deemed to have the conservation and management measures deleted "*from the document.*" The management measures would continue in full force and effect in the regulations and would not be changed unless the Councils prepared proposed rules under section 305. They could initiate this rulemaking without having to amend their FMPs.

(3) By proposing to delete section 206(e), the Administration's bill inadvertently would delete a cross reference appearing in section 206(f), which authorizes the Secretary to certify to the President that he has listed in the annual driftnet report a nation for fishing "that diminishes the effectiveness of or is inconsistent with any international agreement governing large-scale driftnet fishing to which the United States is a party or otherwise subscribes." This certification is deemed a certification under the Pelly amendment.

A technical amendment could be made to section 206(f), but in fact there are no such international agreements in existence. Section 206(f) has effectively been replaced by the procedures under section 206a-206c, the High Seas Driftnet Enforcement Act of 1992, which does not refer to any international agreement. Any nation whose vessels are conducting large-scale driftnet fishing on the high seas would be identified and listed under section 206a, not under the 1990 legislation. If a nation does not stop such fishing, the President must prohibit the import from that nation of fish, fish products, and sport fishing equipment. Six months later, the President may certify such a nation under the Pelly amendment.

Mr. MANTON. The Chair recognizes Mr. Hughes.

Mr. HUGHES. I thank the chairman.

I want to welcome the Secretary and Mr. Schmitten and congratulate you on reaching out to fishermen.

Mr. Schmitten was in my district a month-and-a-half ago and did a good job responding to some of the issues.

User fees give me great concern. Let me ask you about how you would enforce a 1 percent levy. Who would administer that program?

Mr. HALL. That program would be administered by the National Marine Fisheries Service.

Mr. HUGHES. How would you collect?

Mr. HALL. After it was passed by Congress, we estimate it would take four to six months to put the mechanism in place to collect these fees, but it would be done by the National Marine Fisheries Service collecting the fees at the point of first sale.

Mr. HUGHES. So a head boat comes into Cape May and they, the recreational activities, result in sale on the dock. People come on the dock and they buy fish for a dollar a pound or whatever what is brought in by the head boat.

How is that going to be transmitted to the National Marine Fisheries?

Mr. HUGHES. Sixty people board a head boat. They bring in a load of fish and people appear on the dock and want to buy some fish. That happens all the time. The request is a dollar a pound for the fish brought in.

How is that going to be collected and how is it going to be enforced?

Mr. HALL. It is anticipated that most of the fees would be collected through fish dealers and there are approximately 2,100 fish dealers around the country. This is a situation that I think presents some significant difficulties in terms of trying to collect fees from a private transaction, the same way that you would have difficulty collecting sales tax on that same transaction.

Mr. HUGHES. I think you will need the \$88 million for an army of collectors that you talk about collecting.

Mr. HALL. We estimate that the administrative cost would be approximately \$6 million.

Mr. HUGHES. How was that calculated? You don't really believe, do you, that you are going to be able to easily collect fees on fish that is sold from fish dealers or on the docks without having some enforcement mechanism and collection mechanism, do you?

Mr. HALL. There are similar collection mechanisms in place right now in several States, including the State of Alaska, and these administrative costs are based on discussions with those State governments.

Mr. HUGHES. A fish store is going to be your tax collector?

Mr. HALL. When you have a fish dealer who engages in purchasing fish on a regular basis and is required to provide financial reports to the government already, this would be his or her responsibility to pay this tax.

Mr. HUGHES. Are you going to pay him to collect your taxes, for the administrative services involved in collecting your taxes?

Mr. HALL. At the present time that same fish dealer is required to pay income tax, pay a business license tax, and I think in all those cases it is not expected that the fish dealer would be paid the administrative costs of filling out those forms to comply with various provisions of the law.

Mr. HUGHES. You intend to impose a tax on even fish caught in State waters, as I understand it.

Mr. HALL. Correct.

Mr. HUGHES. What effect is that going to have on State ability to develop as they are their own conservation plans to preserve those stocks? Is that good federalism?

Mr. HALL. Congressman, I think we incur substantial expenses at the Federal level and we put a lot more tax dollars into managing these resources than States at the present time. A number of States collect taxes to pay for their part of those management responsibilities and the Federal Government does not do the same. So I think that in terms of federalism, this is dividing the resources.

Mr. HUGHES. I know that the industry in my State is having a very difficult time existing and I don't understand a policy that basically says to help save them, we are going to tax them. That is what it amounts to; particularly with the ITQ program. That would affect the quahog and clam industry and they are struggling as it is.

So we are going to impose additional taxes on them to help them? They are not like the mining industry. These are small fishermen who are having a very difficult time trying to exist and they are frustrated.

Mr. HALL. We have recognized that and I think that we have taken their problems more seriously than any administration that has ever tried to deal with those problems. If you look at the commitments that we have made over the past few months, both in New England and also in the Pacific Northwest, we have responded very quickly. We are aware of the problems, and we are trying to balance what our management needs and responsibilities with what is necessary to sustain the economies of these coastal communities.

Mr. HUGHES. Mr. Hall, I agree. I think that you are doing a lot of things to strengthen the Magnuson Act. But I think that your user fee proposal is misguided for a lot of reasons, not the least of which has been articulated by the gentleman from Alaska, because I have seen the funds go in all kinds of directions, even dedicated funds.

We have an industry that is struggling and to impose upon them fees that they will have to absorb and a collection system that doesn't work—look at the Coast Guard collection system. It has been a disaster.

Mr. MANTON. The gentleman's time has expired.

The Chair recognizes Mr. Gilchrest.

Mr. GILCHREST. Thank you, Mr. Chairman.

Since we are talking about taxes, I am not sure, Mr. Hall, if you would be the right person to answer this question. It would have to come from us I suppose, or the Ways and Means Committee.

The Kennedy tax—would you have any idea how much revenue that raises annually?

Mr. HALL. I believe it is somewhere in the neighborhood—the part that is allocated for fisheries is \$55 million or thereabouts.

Mr. GILCHREST. Fisheries gets \$55 million a year.

Mr. HALL. No, sir. About \$6 million is what is appropriated.

Mr. GILCHREST. And the tax raised is about \$55 million a year?

Mr. HALL. Correct.

Mr. GILCHREST. I suppose maybe this is a naive question, but is there any way that in your legislation you could propose that that tax be used for the purposes you are prescribing this particular tax, this wholesale tax be used for? Is that a remote possibility?

Mr. HALL. Whenever funds are taken away from one area, it would involve a choice of taking those funds away from uses that they are currently being applied to. In previous administrations, the request was for zero funds even though the \$55 million or so was being collected.

We requested \$6 million in the President's budget.

Mr. GILCHREST. Could you explain—there is a great deal of talk about the importance of sustainable yield, maximum sustainable yield, economic and social factors, ecological factors, et cetera.

Could you explain how the interplay in your bill between the effort on the part of all of us to sustain the fisheries to ensure that the maximum sustainable yield is present or reached through plans over a period of years—how will your bill interplay with that, and what seems to be happening with some fisheries, especially in New England and parts of the Pacific Northwest as far as the economic and social impact of the fisheries falls into play with the Council's plans?

I guess what I am saying is it seems that economic and social factors have been more of a factor in determining what the catch is than the maximum sustainable yield has been in determining what the catch is.

Mr. SCHMITTEN. Congressman Gilchrest, I think you have hit on one of the keys of our amendment and that is the conservation standard. One of the lessons learned in New England is that the focus was on the fishermen and fishing side rather than rebuilding the stocks.

We propose changing national standard one to do just that. It must reflect rebuilding the stocks, we define maximum sustainable yield (MSY) and we go on to something that you pointed out; 42 percent of our stocks are currently overfished. We identify to the Council what those stocks are and we instruct the Councils that they have one year to come up with a plan to address overfishing, or failing to do that, the Secretary then must address overfishing. So this is a significant area that we have addressed.

Mr. GILCHREST. Could you explain the relationship—I appreciate that. I know we are all working toward the same goal. The goal is easily identified. The elements to achieve that is the difficult part.

The highly migratory species part of your proposal; could you tell me what the relationship between the Secretary and the Councils would be with regard to the pelagic fishes?

Mr. SCHMITTEN. Currently the Secretary has authority to prepare management plans for highly migratory species. It is an unusual provision that only applies to those species. We make no changes to that in our proposed amendments to Magnuson, and we continue to develop and implement those plans. We have submitted a shark plan, et cetera, and will continue to consider those stocks as very significant to us.

Mr. GILCHREST. I guess the Administration feels that it would be better managed by the Secretary than it was previously managed by the Councils, which did offer some public input into that management plan. I understand it doesn't offer public input into the management plan as it now exists.

Mr. SCHMITTEN. I am often asked do I prefer keeping highly migratory species within the agency. My answer is that if I can demonstrate that we can do the job for the public and for Congress, that we should be given a chance to continue to do that. I have provided funds for that division within our management staff, and I believe that we can effectively manage these stocks so we do not recommend giving up management responsibility for them. The public comment issue is something we take to heart and because of the Federal Advisory Committee Act (FACA) regulations, it has been a concern. We would like to have more advisory capability, which we simply are restricted from having at this time.

Mr. GILCHREST. My time is up.

Thank you, Mr. Chairman.

Mr. MANTON. I thank the gentleman.

The gentlelady from Washington.

Mrs. UNSOELD. Thank you.

As you can tell, there is a lot of interest in the fees. Let me throw a couple of questions at you and perhaps you can use them as a context from which you might want to coordinate some of the other things that have been said and present the Administration's viewpoint. Let me throw these three at you.

How is the Administration proposing to address the issue of fee payments by fishermen who are financially constrained by the collapse of a fishery; and how would user fees collected in one region be reinvested for the protection and management of the resources in that region?

There is a question of equity here because fishermen—and as you were hearing from members of the Committee—it is my view fishermen will be much more supportive of the fee when they can see the direct benefits of that fee.

Last, will funds collected through a user fee be available for vessel buyout? You suggested that in your testimony, but that raises a question of whether fees collected in one region could be used to finance a buyout in another region.

I don't know whether that helps you sort or gather together your comments on the user fees, so take it from there.

Mr. HALL. Let me first address the issue about a fishery that is in collapse. The 1 percent tax, which is the basis of most of the revenues that we have proposed to collect, would be tied to the value of the fish that are caught and that are sold on the market.

When you have a fishery that is in financial distress, there are a lot fewer fish that are sold, so the tax would go down. We recognize that it is a very difficult issue. We struggled with this and we thought if a fishery was overfished, we considered at one point whether it would make sense to stop collecting the fee for a period of time.

I think that a lot of people pointed out, and rightly so, that to provide a financial incentive for mismanaging the fishery did not make good public policy. So even though it is a tough issue, the fact is that as the fishery declines, the taxes would go down that they would be paying and the financial burden would be less.

On your second point, in terms of the regional allocation of resources, our greatest responsibilities lie in those areas where most of the fish are caught. We intend to allocate the funds according to those priorities. As we have looked at our fiscal year 1995 budget, we have made that type of allocation and it doesn't line up one for one, but we think it is pretty close to that approximation.

In terms of funds for vessel buyout and whether they would be available for another region, in that particular case, when you have an overfished fishery and there is a rebuilding program underway, the funds from that fee would go into a special fund only for that region and for no other region. That would only allow for the buyout of vessels in the region where the overfished condition existed.

Mrs. UNSOELD. And you do see the economic and political necessity of the fishermen being able to see how these fees may be put to use in their region then so that it will be a benefit that they can see or something tangible about it to make it acceptable?

Mr. HALL. Yes. I think Mr. Schmitten has traveled around the country and the types of services that most fishermen and members of the industry want—increased surveys, increased enforcement—these are the priorities that are the priorities of the National Marine Fisheries Service, and those are the issues that we are trying to address with this proposal.

Mrs. UNSOELD. I am a day or two short of being able and willing to summarize what I would like to do on conflict of interest in the Magnuson Act, but I would like to have the Administration clarify whether your view on potential conflict of interest is based only on the economic side or it might be on some other particular bias or position with an outside group?

Mr. HALL. Congresswoman Unsoeld, this only deals with financial interest. It does not attempt to deal with other bias, which would be very difficult for us to judge, and it would be very subjective. The Federal conflict of interest statute only deals with financial interests.

Mrs. UNSOELD. As I indicated before the meeting began, I would very much like to share some draft language and work with the Administration on beefing up the section of your proposal.

Mr. HALL. We would look forward to looking at your proposals.

Mrs. UNSOELD. Thank you.

Mr. MANTON. The gentleman from Alabama, Mr. Callahan.

Mr. CALLAHAN. Thank you, Mr. Chairman.

Let me just ask you some questions. There is some confusion on whether or not freshwater pond fish would be subject to the tax under your proposal.

Is it subject to it or is it not?

Mr. HALL. It is not.

Mr. CALLAHAN. On page 44, it says all fish. Now maybe you didn't intend it to be, but I think the fact that the report says that all fish—not freshwater, not salt water, not imported—just the value of all fish—it is my understanding that if this is not your intent the Committee can correct it.

Mr. HALL. As defined in the Act, fish is defined as marine and anadromous species.

Mr. CALLAHAN. Regarding the 1 percent levy on the value of the fish—what determines the value of the catch? What if I sold the fish to my brother-in-law for 10 cents a pound whereas down the street they were selling it for a dollar a pound?

Is NOAA ready to go in and say I made a mistake for selling my fish for less than value? Who is going to determine the value of the fish?

Mr. HALL. It is the value that is paid so it would be similar to a sales tax.

Mr. CALLAHAN. If I sold it to my brother-in-law for a lesser fee—

Mr. HALL. You would pay a lesser tax.

Mr. CALLAHAN. So if I wanted to circumvent this law, I could sell it to him for a penny a pound. You are not contesting that that is below value then?

Mr. HALL. Congressman, most States require licensed dealers. There are safeguards for this type of situation.

Mr. CALLAHAN. But they do not tell the licensed dealer what the value of their catch is going to be and they do not say they are going to buy a product for whatever the State says. The Federal Government is going to tax based upon the sales and the transaction. That is just a point I wanted to bring out, and inform you the Federal Government is establishing the value of a man's catch and taxing him based upon what the Federal Government thinks the value is. This proposal has a lot of holes in it which need to be repaired before you go out to sea in this boat.

The last line of part of the explanation of the bill personifies what we are talking about. You are going to bring in \$41 million dollars from domestic sales and \$47 million dollars from imported sales.

If you are going to have a new tax, which I wouldn't support, why are you going to continue to pound upon American people who are trying to get off your significant resource programs?

Why wouldn't you put all of the tax on imported fish?—because it is violative of GATT?

Mr. HALL. Yes, Congressman, that would violate GATT. The Administration has a policy of not supporting or proposing any legislative proposals that would violate GATT. This is a tax rate that would fall exactly equally on domestic and foreign fish sales.

There are more foreign imports than there are domestic sales.

Mr. CALLAHAN. That in itself ought to be a strong message to you. Now it is in excess of 60 percent. In a few years, we will be in excess of 90 percent simply because of the burdens that we in the Congress and you in the bureaucracy of this government have placed upon the American fishing industry; it is as simple as that.

You are a smart man, you went to college and I appreciate that. I don't mean to be critical just because I didn't go; but I represent some people in south Alabama and we are not all college graduates. A lot of times the people in southern Alabama ask me, as a Member of Congress, simple questions.

Now, what if they came to you and you were representing the State of Alabama, and they said, "Congressman, do you think it is right to give Russia a billion dollars and then turn around and impose a new tax on poor shrimpers in south Alabama?"

Wouldn't you think it would be better to reduce the aid to Russia by \$47 million rather than to give them a billion dollars so they can make their shrimp fleet larger than it is? I would like to know if you can tell me the answer.

Mr. HALL. Congressman, you said a few moments ago that you would like to explore ways to make all our lives a lot simpler. I am not sure we are making much progress now.

I will attempt to answer the question. I think we have to set national priorities and we have international responsibilities. We also have domestic responsibilities for managing our marine resources. We are trying to meet all those responsibilities and it is not easy. We don't have enough money in the Federal budget and we are struggling with that and we feel that we have to do it in a responsible way.

Mr. CALLAHAN. Let me get some Federal official in Washington to say, don't you think it would be better to reduce the aid to Russia \$47 million and not place this tax on the shrimpers of America? Don't you think, yes or no, it would be better to do it that way?

Mr. HALL. Congressman, I believe that decision was made by Congress.

Mr. CALLAHAN. If you were a Member of Congress, which way—

Mr. HALL. I am glad I don't have to make those decisions.

Mr. MANTON. The gentleman's time has expired.

The chair recognizes Mr. Lancaster of North Carolina.

Mr. LANCASTER. Thank you, Mr. Chairman.

I don't think I need to beat the user fee horse anymore, but I would simply join with the chorus of voices that I have heard here today saying that that is not a very good idea and I think you will

find very little support for that on this Committee and perhaps we should begin looking for other sources of revenue.

You indicated that perhaps a use of those funds, if they were generated, might be for a vessel buyout program. Is that actually spelled out in the bill or were you simply coming up with potential uses for that money in anticipation that we would later enact such a program to use funds thus accumulated?

Mr. HALL. That is specifically spelled out in the bill. If there is an overfished condition and the Fishery Management Council has enacted a program to rebuild the stocks, during the time of rebuilding the funds could be used to deal with overcapitalization in that specific fishery. It is a special use of the funds that would take place that is spelled out in the Act. There could be other uses of the funds, depending on what the Fishery Management Council chose to do.

Mr. LANCASTER. Would those be spelled out in the bill or would Councils be given wide latitude as to what they would use the funds for?

Mr. HALL. The Councils have the latitude to make those decisions.

Mr. LANCASTER. Beyond the vessel buyout?

Mr. HALL. Yes, but it would have to deal with the issues of overcapitalization or overutilization of species.

Mr. LANCASTER. A concern that was raised in a field hearing in North Carolina was the need for the representation on the Mid-Atlantic Council.

As you are well aware, Cape Hatteras is a geographical phenomenon which really divides the fisheries of North Carolina because of the way it sticks its nose out in the Atlantic Ocean with the Gulf Stream bringing up fish from the South and the Labrador current bringing fish down from the north, colliding at that point.

But as a result of that, North Carolina has a lot of species that are controlled by the Mid-Atlantic Council on which we do not have any voting membership.

I will not ask you to comment on the advisability of having voting membership on both Councils, something that is done for Florida because of its involvement in the South Atlantic and the Gulf, Washington because of its involvement with both North Pacific and Alaskan waters, but I would simply point out that that is an issue which I hope that the reauthorization of Magnuson will address.

I wonder if you could perhaps justify the need for the user fee if it is to be imposed applying to aquaculture and State fisheries since this is a Federal bill applying only to those fisheries regulated by the Federal Government.

Mr. HALL. Congressman, the National Marine Fisheries Service provides the scientific basis for many of the decisions that are made by both State agencies and the Federal agencies. We provide the primary funding for scientific research into aquaculture, not only in the United States, but the research done here has been used around the world. We have provided significant grants and other financial assistance to start up aquaculture operations, so I believe that in both cases we have significant financial responsibility in those areas.

Mr. LANCASTER. Would it be imposed in exactly the same way as catch in federally regulated waters?

Mr. HALL. Yes, sir.

Mr. LANCASTER. Thank you, Mr. Chairman.

I have no further questions.

Mr. MANTON. I thank the gentleman and recognize the gentleman from California.

Mr. HAMBURG. Mr. Chairman, since I am last, can I have unlimited time?

Mr. MANTON. Last, but not least.

Mr. HAMBURG. I appreciate both of you being here today and taking a bit of a beating. I know it hasn't been too much fun.

I have three questions that pretty much come from the situation we are facing in the Pacific Northwest and you are well aware of it and I do appreciate the responsiveness that we have experienced in our area to the very serious crisis in our salmon fishing industry.

One question has to do with the fees, and get to a couple of other areas.

California is one of the States that imposes fees on its fishermen. Some impose higher fees than others. Also the salmon fishermen in our area tax themselves through the salmon stamp program and thereby provide money for fishery restoration projects.

In terms of the Administration's fee proposal, is there any thought to giving credit to those States which have higher fees than others or fisheries in which fishermen self tax already?

Mr. HALL. Congressman, we realize that there are varying financial situations facing fishermen around the country. In order to be equitable, we felt that this fee should be imposed across the board, and we do not, therefore, make provisions in this fee proposal for granting credit to States that impose fees or special taxation.

Mr. HAMBURG. To the limited extent that we have heard from people in our area, nobody likes to be taxed. Nobody likes fees. I understand the kind of fiscal pressures you are under, but the main concerns that have been voiced to us are in terms of how bureaucratic this imposition of these fees would be, whether the money would actually be dedicated to the fishery or to the specific problems that are being faced by that fishery, whether the money would go to deal with those problems and also just the overall fairness in the imposition of fees.

We haven't had a barrage of negativity to it, but a lot of concerns as to how it would actually be implemented.

A second issue—if I could ask you, what is there in the Administration's bill that is new with respect to the strengthening of habitat?

As Mr. Gilchrest mentioned, some 70 percent of our fish stocks are dependent on inland habitat, wetlands and streams and so forth, and I am wondering how the current administration bill really builds on existing law and approves that law.

Mr. HALL. Congressman, we believe that destruction of habitat and threats to habitat are the greatest long-term threat to our fisheries, even greater than overfishing, and we have proposed having Fishery Management Councils identify as part of each fishery man-

agement plan, the habitat that is essential for that particular fishery.

This will give us the basis for consulting under the Fish and Wildlife Coordination Act, under the section 404 permit program that is administered by the Corps of Engineers. If there are threats or actions that are taking place that would damage or destroy habitat that is necessary for these species, we have a basis for objecting to and stopping that activity from taking place.

Mr. HAMBURG. Are you also suggesting Management Councils have greater authority over habitat issues in terms of the anadromous fisheries?

Mr. HALL. Correct. It would be the species that would be covered by a fishery management plan. The anadromous fisheries are generally managed by the States, so I would let Mr. Schmitt address that. But, I believe that those fisheries are not covered by fishery management plans.

Mr. SCHMITTEN. We want the Councils to become more proactive in habitat. The first signal is that for all fish that are addressed under an FMP, the Councils would identify an essential fish habitat area. That does include salmon and steelhead for the West Coast. We could use the listing for any federal project proposed within those areas. It gives us a chance to call attention of other Federal agencies that this is a critical area for fisheries.

Mr. HAMBURG. One more question.

H.R. 4430 requires that a Council member with a financial interest that would be significantly affected by a Council decision not participate in deliberations on that decision.

What basis would be used to make the decision on when a Council member's financial interest is being significantly affected? What is the definition there?

Mr. HALL. We would promulgate regulations to clarify that. But we would analyze the financial holdings of all Council members and identify the issues that are pending before that Council or likely to come up before the Council, and provide some guidance to the Regional Director through the General Counsel's Office at the Department of Commerce.

I am not prepared to state a specific percentage—that would be promulgated in regulations.

Mr. HAMBURG. So when you are looking at the agenda of a coming Council meeting, you would look at who is eligible to vote on what issues?

Mr. HALL. I think we could go beyond that and look at the issues that are likely to be considered by a Council over the next several years and all of the different species, and then give some guidance that could be used by the Regional Director to make those decisions, if the Council member did not recuse himself or herself from the deliberations.

Mr. HAMBURG. Thank you very much, Mr. Chairman.

Mr. MANTON. I have one last question.

Mr. Hall, just as a follow-up on Mr. Callahan's question regarding how the fees would apply to aquaculture. Is it my understanding that the fees would apply to marine fish which are farm-raised, but not freshwater fish?

Mr. HALL. That is correct, Mr. Chairman.

Mr. MANTON. I guess we have no more members seeking recognition, so that will conclude our hearing for the day.

We thank you, Mr. Hall and Mr. Schmitten.

Mr. HALL. Thank you, Mr. Chairman. We appreciate the opportunity to appear.

[Whereupon, at 4:15 p.m., the Subcommittee was adjourned, and the following was submitted for the record:]

TESTIMONY OF

DOUGLAS K. HALL
ASSISTANT SECRETARY FOR OCEANS AND ATMOSPHERE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
U.S. DEPARTMENT OF COMMERCE

BEFORE THE

SUBCOMMITTEE ON FISHERIES MANAGEMENT
COMMITTEE ON MERCHANT MARINE AND FISHERIES
U.S. HOUSE OF REPRESENTATIVES

JUNE 29, 1994

Mr. Chairman and Members of the Subcommittee: I am Doug Hall, Assistant Secretary for Oceans and Atmosphere of the U.S. Department of Commerce. I appreciate the opportunity to testify on H.R. 4430, the Administration's proposal to amend the Magnuson Fishery Conservation and Management Act (Magnuson Act).

First, I would like to thank you, Chairman Manton and Chairman Studds for introducing this legislation. The Administration looks forward to working closely with you and the Subcommittee as Congress considers this legislation. This hearing is a critical step in the open dialogue between interested parties that will result in changes to the Magnuson Act to ensure the future of the Nation's marine fisheries.

The amendments in H.R. 4430 were developed over the last year and a half by the Administration, and have built on hearings held by this Subcommittee and others and consultation with the regional fishery management councils. Overall, I believe that this

package of proposals addresses needed changes to the Magnuson Act and will improve the management of the Nation's living marine resources. While a comprehensive package of about 20 specific amendments is proposed, my testimony will focus on nine major amendments. The additional proposals are described briefly in an attachment to my testimony.

In your letter of invitation, you mentioned specific interest in the Administration's proposal which would establish marine fisheries user fees. The National Performance Review (NPR) conducted by Vice President Gore recognized that private parties should pay for the commercial use of public fishery resources, particularly where the Federal government provides general or specific services. Currently, the Magnuson Act allows only for the collection of the administrative costs of issuing permits. These funds are deposited in the General Fund of the Treasury and are not available to the National Marine Fisheries Service (NMFS) for conservation and management activities. Presently NMFS collects permit fees for only nine fisheries. Expansion of current fees is necessary to ensure a return to the Nation for the use of these public resources and to provide for the adequate management of marine fisheries in the future.

The marine fisheries resource fee amendment is based on the NPR's recommendation and discussions with Congressional staff and constituents. The Administration's goal in developing this

proposal was to ensure that it was equitable to all participants and that the fees be reasonable and not represent an onerous burden. It is important to note that the use of these fees would be dedicated to the management and conservation of marine fisheries by NMFS. The fee proposal is made up of four elements:

1) Establishment of user fees above administrative costs for any permit issued under the Magnuson Act. The Magnuson Act currently allows for the collection of fees associated with permits, but the amount of the fee is limited to the administrative cost of issuing the permit. This element lifts the administrative cost restriction and ensures that the collection of user fees is consistent with the Independent Offices Appropriations Act (31 U.S.C. 9701).

2) Establishment of a one percent levy on the value of fish and shellfish at the point of first sale to reduce the level of taxpayer funding for fishery programs that benefit all suppliers of seafood to the U.S. market. A one percent levy on both domestic and imported fish is consistent with the General Agreement on Tariffs and Trade (GATT). In total, we estimate that approximately \$88 million would be generated annually by this provision. This total is composed of an estimated \$41 million from the \$4.1 billion in domestic first-sale value and an estimated \$47 million from \$4.7 billion in imports.

3) Establishment of a three percent annual fee on the value of fish allocated under individual harvest shares, such as an individual transferable quota (ITQ) program. This fee would recover costs associated with this specific form of management. This element would generate approximately \$6.2 million in gross revenues for the three fisheries expected to be under ITQ systems in FY 1995.

4) Establishment of a fee on vessels to cover the costs of special management measures, such as observers, that directly benefit specific fisheries and fishermen. This proposed fee would pay for specific measures on a case-by-case basis.

As noted above, funds collected under the user fee proposal would be dedicated to the conservation and management of marine fisheries by NMFS. Specifically, funds collected under the proposal would be used for: collecting, processing, and analyzing scientific, social, and economic information; placing observers onboard domestic vessels; conducting scientific research and publishing results; developing, monitoring, and implementing fishery management plans (FMPs); improving enforcement of marine conservation programs; and educating resource users and the public on marine conservation programs.

One very significant use of the funds authorized by the amendments is to allow fees collected from some overfished

fisheries to be used to reduce harvesting capacity in that fishery. Overfished fisheries managed under an FMP that calls for limited access would be eligible. With 40 percent of the Nation's marine fish stocks identified as overfished, this amendment would be a major step in improving this condition.

A second amendment would add the phrase "rebuild depleted stocks" to the current requirement to prevent overfishing. Such a change is needed to ensure that stocks are rebuilt should they become depleted. The definition of optimum yield would be amended to define the level to which depleted stocks must be rebuilt. This change provides that stocks should be rebuilt to a level consistent with that necessary to produce the maximum sustainable yield (MSY) i.e., the long term average for the stock and a level that can be measured for management purposes. This requirement would not negate the current provision which allows MSY to be modified by any relevant economic, social, or ecological factor to arrive at a calculation for optimum yield as long as it does not cause the stock to fall below a level consistent with the MSY.

A related amendment would require a council to prepare an FMP amendment to prevent a stock that is approaching an overfished condition from becoming overfished, or to rectify an overfished condition. Council action would be required within one year of receiving a report from the Secretary that the stock is

approaching an overfished condition, or is overfished, based on an overfishing definition contained in the FMP. It would also require the Secretary to take action if the council has not submitted the necessary amendment within the required time. This provision would ensure that action is taken within a reasonable time period to protect a stock from overfishing. It utilizes the definition of overfishing currently required in each FMP as the triggering mechanism. The required amendment of the FMP must address the prevention of current or future overfishing and must incorporate provisions to restore the stock to a condition that is not overfished.

The Administration proposes adding a new national standard requiring conservation and management measures to minimize incidental catches that result in the waste of living marine resources. The councils or NMFS would develop measures, where possible, that would eliminate the unnecessary take of non-target species that has significantly reduced the stocks of many marine resources. This new standard recognizes that not all incidental catch is bad (i.e., legal incidental take of cod in a haddock fishery). Rather, it focuses on the incidental catch that wastes living marine resources, in whatever form, such as discarding and highgrading. We would interpret "living marine resources" to include marine mammals or threatened/endangered species.

We believe that habitat degradation may be the greatest long-term threat to the continued production of many marine fisheries. The amendments emphasize the importance of habitat protection and define a new term, "essential fish habitat." The definition would guide the identification of areas of habitat that are considered essential to the production of optimum yield from one or more fisheries under management by a council. We anticipate that these habitats would include areas used for spawning, nursery, feeding, and migration, as well as other areas that are vital for life cycle functions of specific fisheries. The word "essential" is used to avoid confusion with "critical habitat" as used in the Endangered Species Act. The amendments would require the councils to publish an annual listing of all essential fish habitats for all FMPs. This listing would provide a ready reference for all projects being developed that may affect fishery habitat, and for all project reviewing officials.

The Administration has proposed an amendment that would streamline the current cumbersome and time consuming FMP approval and amendment process. This provision would focus more effort and attention on the important fishery regulations that represent the requirements with which the fishing industry and public must comply. The Magnuson Act currently requires that FMPs contain all necessary conservation and management measures. The amendment would remove these measures from the FMP and, instead, have the councils prepare proposed regulations incorporating all

the management measures. The "new" FMPs would be brief documents that summarize the fishery, potential problems, management objectives, management alternatives, and possible impacts. This amendment would make the rulemaking process more flexible and timely. The councils could change management measures substantially without taking the preliminary step of amending the FMP. All necessary analysis of the effects of proposed measures would still be done in compliance with the National Environmental Policy Act, Regulatory Flexibility Act, and other applicable laws. It is important to note that the proposed amendment would not revise significantly the current role of the Secretary or the councils. The intent of the amendment is to make the fishery management process more responsive to the industry.

The Administration believes that the perception of or potential for conflicts of interest on the councils must be addressed. The amendment would forbid a council member with a financial interest that would be significantly affected by a council decision from participating in a decision, unless granted a written authorization by the NMFS Regional Director. The Regional Director can grant an authorization upon determining that the need for the member's participation outweighs the potential for a conflict of interest. The Secretary is authorized to issue guidelines for determinations.

Recognizing the increasingly important role Tribal representatives play on the Pacific Council, the amendments would provide an additional obligatory seat on the Pacific Council for a representative of Indian tribes of California, Oregon, Washington, or Idaho that have Federally-recognized fishing rights. Although Indian representatives have been appointed to at-large positions on the Pacific Council from among the nominees provided by Pacific Northwest Governors, there is no assurance that the Governors will continue to include such nominees. The representative would be appointed by the Secretary, as designated by the Secretary of the Interior from a list of not fewer than three individuals nominated by the appropriate tribal governments. Representation would be rotated among the tribes and each appointed representative would serve for a term of three years and not be reappointed for a consecutive term.

Finally, the amendments would provide the Secretary with the authority to implement national, uniform mandatory recordkeeping and reporting requirements for all fisheries subject to the Magnuson Act. Current authority is limited to individual FMP recordkeeping and reporting, and individual fishery data collection programs in advance of an FMP. The lack of a national data collection program has resulted in independent requirements for each FMP that are not integrated with each other, or with non-FMP data collection programs sponsored by the NMFS or the states. This amendment would provide the Secretary with the

ability to integrate the current data collection programs into a comprehensive National data collection and management system. The amendment would eliminate duplicative reporting and reduce the reporting burden on the industry.

Thank you, Mr. Chairman, for the opportunity to testify on the Administration's proposals to amend the Magnuson Act. I would be happy to answer any questions you or other members of the Subcommittee may have.

SUMMARY OF ADDITIONAL AMENDMENTS

COLLECTION OF ECONOMIC DATA FROM PROCESSORS:

The amendments would provide for the collection of economic data from processors, as is now required from harvesting and other entities in the industry. Economic data from processors, as well as fishermen, would be extremely useful in meeting the requirements of the Magnuson Act, including national standard 1 (calculation of optimum yield), national standard 7 (minimizing costs including those on processors), section 303(a)(9) (fishery impact statement), and other applicable law, including National Environmental Policy Act and Executive Order 12866 (economic/social analyses).

DATA COLLECTION:

The amendments would require foreign processors operating in the internal waters of a State to report certain vessel and catch information to the Secretary which is generally not available now. Federal and State agencies, as well as other regulatory organizations such as the Interstate Marine Fisheries Commissions, involved with managing the species need to know the amount of fish harvested, where U.S. fishermen are harvesting the fish, and whether the species are managed under a FMP or found in waters of two or more States.

The amendments would establish a three-year limit on maintaining the confidentiality of data. Currently, the Secretary must preserve the confidentiality of data submitted by fishermen or processors in perpetuity. The provision would prevent the disclosure of the identity or business of any person submitting statistics and reduce administrative burdens.

INTERNATIONAL MANAGEMENT:

The amendments would delete the requirement that U.S. fishing vessels must be provided with a reasonable opportunity to harvest an allocation or quota under a relevant international fishery agreement. The primary management program for highly migratory species should continue to be accomplished through international organizations. However, the current requirement that U.S. fishermen be allowed a fair opportunity to take an internationally established quota may pose a problem if the United States wishes to establish a quota on a local stock or substock of a highly migratory species for conservation purposes that is less than that allowed by the international organization. The inability to set a lower quota could result in local overfishing and the loss of long-term benefits.

EMERGENCY ACTIONS:

The amendments would expand the timeframe for a second "emergency action period" from the current 90 days to 270 days. Approval of the additional 270-day period would be dependent on provision for public comment during the initial 90-day emergency and progress by the council, or Secretary as appropriate, on the development of an FMP amendment with a permanent solution. The current 180 days (two 90-day periods) is frequently insufficient time for a council or the Secretary to implement a permanent solution through an FMP or amendment. In addition, emergency regulations to protect public health would remain in effect until the emergency no longer exists.

FOREIGN FISHING:

The amendments would delete the requirement that the Secretaries of Commerce and State prepare a foreign allocation report for Congress and the President each year. The report is no longer necessary since there are no foreign fishermen and joint venture operations in the U.S. EEZ.

The amendments would also allow the Secretary to issue a permit to foreign vessels for transshipment of fish products in the absence of a governing international fishery agreement (GIFA). The Magnuson Act requires foreign transshipment to satisfy the same GIFA, application, and permit requirements as are required of foreign nations whose vessels and owners engage in the catching, taking and processing of fish in the EEZ. Foreign fishing, such as joint ventures, will continue to be authorized only under a GIFA; however, the approval of foreign transshipments at sea in the EEZ or within the boundary of any state that is found to be in the interest of the United States will be encouraged by not subjecting them to the same stringent approval requirements as for harvesting vessels.

LARGE-SCALE DRIFTNET FISHING REPORT:

The amendments would eliminate the requirement that a Driftnet Report be prepared annually. The purposes of this requirement have been met, with Japan, Korea, and Taiwan committing to the implementation of the United Nations Resolution calling for a moratorium on the use of driftnets after December 31, 1992. While we do not believe that there should be a statutory requirement for an annual report, we will produce the report on an "as needed" basis.

The amendments also address two problems that have arisen in enforcing the prohibition against large-scale driftnet fishing.

The amendments would clarify what vessels are subject to U.S. jurisdiction, to include foreign vessels whose nation authorizes the United States to exercise jurisdiction, and stateless vessels. It would also create a rebuttable presumption that a vessel with gear capable of use for large-scale driftnet fishing is engaged in such fishing.

EXTENSION OF CRIMINAL PENALTIES:

The amendments would extend the protection of criminal penalties to persons employed by or under contract to NMFS and involved in collecting fishery information in their official duties. Unlike observers, who were afforded protection under the Amendments of 1990, no prohibitions or criminal sanctions explicitly address assaults on statistical agents. Statistical agents, however, are often the primary Federal contact with members of the fishing industry who may take exception to regulatory actions taken under the Magnuson Act, the Endangered Species Act, the Marine Mammal Protection Act, the Lacey Act, or other applicable law.

JUDICIAL REVIEW OF PERMIT SANCTIONS:

The amendments would provide for judicial review of permit sanctions. Although the Magnuson Act provides that any person who is assessed a civil penalty may obtain a review of the penalty in U.S. district court, it does not provide explicitly for such review of permit sanctions. The two standards should be treated the same, especially since they may be imposed together in the same administrative hearing. The amendments would also delete language regarding service to ensure consistency of service procedures with other district court actions in accordance with the Federal Rules of Civil Procedure.

ENFORCEMENT:

The amendments would allow the Penalty and Forfeiture Fund to be capitalized by receipts from, and to be used for, the enforcement of all statutes dealing with living marine resources. The Magnuson Act does not currently provide for monies from the Penalty and Forfeiture Fund to be used for enforcement-related activities associated with various living marine resource statutes such as the Marine Mammal Protection Act.

Additionally, the amendments would provide that any person found in any enforcement proceeding to be in violation of the Act or any other marine resource law shall be liable for the costs of the sale, storage, care, or maintenance of fish or property seized as a result of the violation.

OBSERVER WAGES AS MARITIME LIENS:

The amendments would provide observers with the same lien priority for past-due wages as is currently provided for seamen's liens under admiralty and general maritime law. This addresses the problem of vessels, or contracting parties, not paying for observer services.

AUTHORIZATION OF APPROPRIATIONS:

The amendments would authorize appropriations for the Department of \$103,218,000 for FY 1994, \$142,502,000 for FY 1995, and "such sums as may be necessary" for FY 1996.

103D CONGRESS
2D SESSION

H. R. 4404

To amend the Magnuson Fishery Conservation and Management Act to promote the long-term sustainability of marine fisheries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1994

Mr. GILCREST (for himself, Mr. SHAYS, Mr. RAVENEL, and Ms. FURSE) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Magnuson Fishery Conservation and Management Act to promote the long-term sustainability of marine fisheries, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Marine Fish Conserva-
5 tion Amendments of 1994".

1 **TITLE I—AMENDMENTS TO MAG-**
2 **NUSON FISHERY CONSERVA-**
3 **TION AND MANAGEMENT ACT**

4 **SEC. 101. AMENDMENTS TO MAGNUSON FISHERY CON-**
5 **SERVATION AND MANAGEMENT ACT.**

6 Except as otherwise expressly provided, whenever in
7 this title an amendment or repeal is expressed in terms
8 of an amendment to, or repeal of, a section or other provi-
9 sion, the reference shall be considered to be made to a
10 section or other provision of the Magnuson Fishery Con-
11 servation and Management Act (16 U.S.C. 1801 et seq.).

12 **SEC. 102. FINDINGS AND POLICY.**

13 (a) FINDINGS.—(1) Section 2(a)(2) (16 U.S.C.
14 1801(a)(2)) is amended by striking “and” at the end of
15 clause (A), and by inserting before the period at the end
16 the following: “and, (C) losses of essential fishery habitats
17 have diminished the ability of stocks of fish to survive.”.

18 (2) Section 2(a)(6) (16 U.S.C. 1801(a)(6)) is amend-
19 ed by inserting after “to insure conservation,” the follow-
20 ing: “to provide long-term protection for essential fishery
21 habitats,”.

22 (3) Section 2(a) (16 U.S.C. 1801(a)) is amended by
23 adding at the end the following new paragraph:

24 “(9) The greatest long-term threat to the viabil-
25 ity of commercial and recreational fisheries of the

1 United States is the continuing loss of essential fish-
2 ery habitat. Increased attention must be given to the
3 protection of these habitats to conserve and manage
4 the fishery resources of the United States.”.

5 (b) POLICY.—(1) Section 2(c)(3) (16 U.S.C.
6 1801(c)(3)) is amended by inserting after “practical meas-
7 ures that” the following: “reduce bycatch to insignificant
8 levels approaching zero and”.

9 (2) Section 2(c) (16 U.S.C. 1801(c)) is amended by
10 striking “and” after the semicolon in paragraph (5), by
11 striking the period at the end of paragraph (6) and insert-
12 ing “; and”, and by adding at the end the following new
13 paragraph:

14 “(7) to ensure to the maximum extent prac-
15 ticable that all State and Federal actions are con-
16 sistent with the conservation and management of
17 fisheries under this Act.”.

18 **SEC. 103. DEFINITIONS.**

19 Section 3 (16 U.S.C. 1802) is amended—

20 (1) by redesignating paragraphs (2) through
21 (5) as paragraphs (3) through (6) respectively, by
22 redesignating the second paragraph (6) through
23 paragraph (21) as paragraphs (8) through (23), re-
24 spectively, by redesignating the second paragraph
25 (22) through paragraph (26) as paragraphs (25)

1 through (29), respectively, and by redesignating the
2 second paragraph (27) through paragraph (32) as
3 paragraphs (31) through (36), respectively;

4 (2) by inserting after paragraph (1) the follow-
5 ing new paragraph:

6 “(2) The term ‘bycatch’ means the incidental
7 catch, take, or harvest of—

8 “(A) marine mammals, birds, turtles, or
9 fish that are not the target species of the fish-
10 ery in which a fishing vessel is engaged,

11 “(B) any fish discarded or lost during fish-
12 ing operations, or

13 “(C) fish of the same species as the target
14 species of the fishery in which a fishing vessel
15 is engaged and the harvest of which is prohib-
16 ited by conservation and management measures
17 promulgated under a fishery management plan
18 in effect under title III.”;

19 (3) by inserting after paragraph (6), as redesign-
20 ated by paragraph (1) of this subsection the follow-
21 ing new paragraph:

22 “(7) The term ‘essential fishery habitat’ means
23 an area which includes physical or biological features
24 which (A) are essential to the conservation and man-

1 agement of a fishery, and (B) may require special
2 management considerations or protection.”.

3 (4) in paragraph (9), as redesignated by para-
4 graph (1) of this subsection, by inserting “, turtles,”
5 after “marine mammals”;

6 (5) in paragraph (23), as redesignated by para-
7 graph (1) of this subsection, by inserting “biologi-
8 cal,” before “or ecological factor”, and by inserting
9 before the period the following: “, except that no
10 economic or social factor may be applied under this
11 paragraph to increase the amount described in this
12 paragraph above maximum sustainable yield, com-
13 promise ecological integrity, lead to or prolong
14 overfishing, or impede recovery from overfishing”;

15 (6) by inserting after paragraph (23); as redes-
16 ignated by paragraph (1) of this subsection, the fol-
17 lowing new paragraph:

18 “(24) The term ‘overfishing’ means a level or a
19 rate of fishing that either jeopardizes the capacity of
20 a fish species, population, or population complex to
21 provide maximum sustainable yield on a continuing
22 basis or compromises ecological integrity.”; and

23 (7) by inserting after paragraph (29), as redes-
24 ignated by paragraph (1) of this subsection, the fol-
25 lowing new paragraph:

“(30) The term ‘target species’ means the species or species groups for which a fishing vessel is fishing.”.

SEC. 104. HIGHLY MIGRATORY SPECIES.

Section 102 (16 U.S.C. 1812) is amended by striking “utilization” and inserting “yield”.

SEC. 105. NATIONAL STANDARDS.

(a) **ACHIEVING OPTIMUM YIELD.**—Section 301(a)(1) (16 U.S.C. 1851(a)(1)) is amended by striking “for the United States fishing industry”.

(b) **MARGIN OF SAFETY.**—Section 301(a) (16 U.S.C. 1851(a)) is amended by redesignating paragraphs (3) through (7) as (4) through (8), respectively, and by inserting after paragraph (2) the following new paragraph:

“(3) In order to account for inadequacies in data, uncertainties in the best available scientific information, and unpredictable variations and fluctuations in fish populations and catches, and to provide for the ecological needs of the species that interact within a management unit, conservation and management measures shall provide an adequate margin of safety to act as a buffer against overfishing.”.

(c) **REDUCTION OF BYCATCH.**—Section 301(a) (16 U.S.C. 1851(a)) is amended by adding at the end the following new paragraph:

1 “(9) Conservation and management measures
2 shall reduce bycatch to the lowest level practicable
3 and avoid unnecessary waste of fish.”.

4 (d) GUIDELINES.—Section 301(b) (16 U.S.C.
5 1851(b)) is amended by striking “advisory guidelines
6 which shall not have the force and effect of law” and in-
7 serting “guidelines,”.

8 **SEC. 106. REGIONAL FISHERY MANAGEMENT COUNCILS.**

9 (a) VOTING MEMBERS.—Section 302(b) (16 U.S.C.
10 1852(b)) is amended—

11 (1) in paragraph (2)(B) by adding at the end
12 the following:

13 “In addition, the Secretary, in making appointments
14 under this section, shall ensure that no fewer than 25 per-
15 cent of the appointed members of each Council are persons
16 selected for their fisheries expertise, as demonstrated by
17 university, environmental organization, or other nonuser
18 group affiliation and by past actions and accomplish-
19 ments.”; and

20 (2) in paragraph (5) in the first sentence by in-
21 serting before the period at the end the following:
22 “or if the Secretary makes a written determination,
23 including a statement of the reasons for such deter-
24 mination, that the member has violated conflict of
25 interest provisions of subsection (k)”.

1 (b) TRANSACTION OF BUSINESS.—Section 302(e)
2 (16 U.S.C. 1852(e)) is amended by redesignating para-
3 graphs (2) through (4) as paragraphs (3) through (5), re-
4 spectively, and inserting after paragraph (1) the following
5 new paragraph:

6 “(2) Each decision of the Council shall be re-
7 corded through a roll call vote such that the vote of
8 individual members is registered and forwarded with
9 the decision to the Secretary for review under sec-
10 tion 304.”.

11 (c) FISHERY HABITAT CONCERNS.—Section 302(i)
12 (16 U.S.C. 1852(i)) is amended—

13 (1) in paragraph (1) by striking “and” after
14 the semicolon in subparagraph (A), by redesignating
15 subparagraph (B) as subparagraph (C); and by in-
16 serting after subparagraph (A) the following new
17 subparagraph:

18 “(B) may request that the Secretary initi-
19 ate consultation under section 305(e)(4) con-
20 cerning any such activity which may affect the
21 essential fishery habitat of a fishery under its
22 jurisdiction which is designated in a fishery
23 management plan which is in effect under sec-
24 tion 304; and”; and

1 (2) in paragraph (2) by striking “In the case of
2 a comment or recommending under paragraph
3 (1)(C), the response” and inserting “The response”,
4 by inserting “, avoiding,” after “mitigating”, and by
5 adding at the end the following: “In the case of a
6 response or decision that is inconsistent with the
7 Council’s recommendations, the Federal agency shall
8 explain its reasons for not following the rec-
9 ommendations and how its actions are consistent
10 with the conservation and management of the fish-
11 ery concerned.”.

12 (d) DISCLOSURE OF FINANCIAL INTEREST.—Section
13 302(k) (16 U.S.C. 1852(k)) is amended—

14 (1) in the heading by inserting “AND RECUSAL”
15 before the period at the end;

16 (2) in paragraph (2) by striking subparagraph
17 (B) and inserting the following:

18 “(B) the spouse, child, grandchild, parent,
19 sibling, or partner of that individual;”;

20 (3) in paragraph (5) by striking “and” after
21 the semicolon in subparagraph (A), by striking the
22 period at the end of subparagraph (B), and inserting
23 “; and”, and by adding at the end, the following new
24 subparagraph:

“(C) be kept on file with the Secretary for use in reviewing Council actions under section 304 and made available for public inspection at reasonable hours.”;

(4) in paragraph (6) by striking “prescribed under” and all that follows through the end of the paragraph and inserting “prescribed under this subsection may be treated as cause for the invalidation of that action if the vote of that individual was necessary for approval of that action under subsection (e).”; and

(5) by amending paragraph (7) to read as follows:

“(7) A Council member holding a financial interest requiring disclosure under this subsection shall recuse him or herself from voting on or participating in all Council actions that would affect such financial interest. Council members and the public may submit to the Secretary for review under section 304, in writing, a challenge to any vote of a Council member that is alleged to have been made in violation of this paragraph.”.

SEC. 107. CONTENTS OF FISHERY MANAGEMENT PLANS.

(a) **REQUIRED PROVISIONS.**—Section 303(a) (16 U.S.C. 1853(a)) is amended as follows:

1 (1) Paragraph (1)(A) is amended by inserting
2 before the semicolon at the end the following: "in-
3 cluding its essential fishery habitat".

4 (2) Paragraph (2) is amended by inserting after
5 "location," the following: "its essential habitat,".

6 (3) Paragraph (7) is amended by striking
7 "readily available", and by inserting before the semi-
8 colon at the end the following: ", including the ef-
9 fects of fishing gear and practices used in that fish-
10 ery on the habitat of the fishery or other fisheries
11 under the Council's jurisdiction".

12 (4) Paragraph (8) is amended by striking
13 "and" after the semicolon, paragraph (9) is amend-
14 ed by striking the period and inserting a semicolon,
15 and the following new paragraphs are added at the
16 end:

17 "(10) specify an objective definition of
18 overfishing for each fish species or population in-
19 volved in the fishery (as described pursuant to para-
20 graph (2)), which is developed or expressed in terms
21 of a minimum level of spawning biomass, maximum
22 level or rate of fishing mortality, or other measur-
23 able standard designed to ensure the maintenance of
24 the fish species or population's abundance, age
25 structure, sex ratio, and size structure so as to pre-

1 serve its capacity to provide maximum sustainable
2 yield and maintain ecological integrity;

3 “(11) in the case of any fishery management
4 plan or amendment for a fishery for which a deter-
5 mination has been made by the Council or the Sec-
6 retary that such fishery is overfished, contain a re-
7 covery plan which will establish measures for re-
8 building the fish species, population, or population
9 complex in accordance with specifications for a re-
10 covery plan set forth in section 304(h)(2);

11 “(12) specify allowable gear types for the fish-
12 ery;

13 “(13) require the use of gear types which mini-
14 mize bycatch and associated mortality;

15 “(14) include provisions that—

16 “(A) require that observers be stationed on
17 fishing vessels engaged in the catching, taking,
18 or harvesting of fish and on fish processing ves-
19 sels that are vessels of the United States and
20 are fishing for or processing species under the
21 jurisdiction of the Council having authority over
22 the geographical area to which the plan applies
23 for purposes of collecting data necessary for the
24 conservation and management and scientific un-

1 derstanding of any fisheries under the jurisdic-
2 tion of the Council; and

3 “(B) are reasonably calculated to—

4 “(i) ensure the gathering by observers sta-
5 tioned on vessels pursuant to subparagraph (A),
6 of reliable data that is necessary for the con-
7 servation and management and scientific under-
8 standing of the fisheries covered by the plan;

9 “(ii) be fair and equitable to all fishing
10 vessels and fish processing vessels that are ves-
11 sels of the United States and that participate in
12 fisheries covered by the plan;

13 “(iii) be consistent with other applicable
14 laws; and

15 “(iv) take into consideration the operating
16 requirements of the fisheries and the safety of
17 observers and fishermen;

18 “(15) establish a system of fees to pay for the
19 costs of implementing the plan;

20 “(16) assess the bycatch of all gear types used
21 in the fishery; require through regulation provisions
22 to measure bycatch and associated mortality; develop
23 regulations such as seasonal, time, and area clo-
24 sures, gear modifications, and others to reduce
25 bycatch and associated mortality; specify the best

1 available technology that reduces bycatch; and evalu-
2 ate the bycatch of all new gear types and methods
3 before they can be allowed in the fishery; and

4 “(17) contain conservation and management
5 measures to minimize or eliminate the adverse im-
6 pacts of fishing gear and practices on habitat for
7 fish.”.

8 (b) REVIEW OF EXISTING PLANS BY SECRETARY
9 REGARDING OVERFISHING DEFINITION.—

10 (1) REVIEW AND DETERMINATION OF COMPLI-
11 ANCE.—Not later than 90 days after the date of the
12 enactment of this Act, the Secretary of Commerce
13 shall—

14 (A) review each fishery management plan
15 in effect under title III of the Magnuson Fish-
16 ery Conservation and Management Act;

17 (B) determine whether the plan contains a
18 definition (or definitions) of overfishing in com-
19 pliance with section 303(a)(10) of that Act, as
20 amended by subsection (a) of this section; and

21 (C) if the Secretary determines that the
22 plan does not contain such a definition, notify
23 the Regional Fishery Management Council hav-
24 ing authority over the geographical area to

1 which the plan applies regarding that deter-
2 mination.

3 (2) PREPARATION OF AMENDMENT.—Not later
4 than 180 days after receiving notification from the
5 Secretary of Commerce under paragraph (1) with re-
6 spect to a fishery management plan, a Regional
7 Fishery Management Council shall prepare and sub-
8 mit to the Secretary an amendment to the plan to
9 add to the plan a definition of overfishing in accord-
10 ance with section 303(a)(10) of the Magnuson Fish-
11 ery Conservation and Management Act, as amended
12 by subsection (a) of this section, in accordance with
13 procedures and requirements applicable to an
14 amendment under that Act.

15 **SEC. 108. ACTIONS BY THE SECRETARY WITH RESPECT TO**
16 **FISHERY MANAGEMENT PLANS.**

17 Section 304(a)(2) (16 U.S.C. 1854(a)(2)) is amended
18 in subparagraph (B) by striking “and” after the semi-
19 colon, in subparagraph (C) by striking the period and in-
20 serting “; and”, and by adding at the end of paragraph
21 (2) the following:

22 “(D) evaluate whether any violation of sec-
23 tion 302(k) occurred with respect to the prepa-
24 ration of the plan or amendment that is the
25 subject of the review.”.

1 (b) REVIEW BY SECRETARY.—Section 304(b) (16
2 U.S.C. 1854(b)) is amended—

3 (1) in paragraph (2) in the first sentence by in-
4 serting before the comma the following: “or with the
5 best scientific information presented to the Council
6 by scientists participating in the plan development
7 process”;

8 (2) by redesignating paragraph (3) as para-
9 graph (4); and

10 (3) by inserting after paragraph (2) the follow-
11 ing:

12 “(3) If the Secretary determines that a Council
13 member voted in violation of section 302(k) in any
14 Council action related to the preparation of the plan
15 or amendment, the Secretary shall disapprove the
16 action if that vote was necessary for approval of the
17 action.”.

18 (c) PREPARATION BY SECRETARY.—(1) PREPARA-
19 TION REQUIRED.—Section 304(c)(1) (16 U.S.C.
20 1854(c)(1)) is amended—

21 (A) in the material preceding subparagraph
22 (A), by striking “may” and inserting “shall”, and by
23 inserting after “management plan,” the following:
24 “including a recovery plan if necessary,”;

1 (B) in subparagraph (A) by striking "or" after
2 the semicolon;

3 (C) by redesignating subparagraph (B) as sub-
4 paragraph (E);

5 (D) in subparagraph (E) (as redesignated by
6 paragraph (3) of this subsection) by striking "such
7 plan or amendment" and inserting "a plan or
8 amendment submitted by a Council"; and

9 (E) by inserting after subparagraph (A) the fol-
10 lowing new subparagraphs:

11 "(B) the appropriate Council fails to develop
12 and submit to the Secretary a recovery plan as re-
13 quired under subsection (h), within the time speci-
14 fied therein;

15 "(C)(i) the Secretary determines under sub-
16 section (e)(4) that a fish species, population, or pop-
17 ulation complex is overfished,

18 "(ii) no fishery management plan or required
19 part thereof, is in effect for the fishery for that spe-
20 cies, population, or population complex, and

21 "(iii) no such plan or amendment is submitted
22 by the appropriate Council to the Secretary for ap-
23 proval within 240 days after the Council is notified
24 of such determination;

“(D) notwithstanding any fishery management plan that is in effect and any objective definition of overfishing therein, the Secretary determines, based on the best scientific information available, that a fish species, population, or population complex—

“(i) has sustained fishing mortality that exceeds maximum sustainable yield by more than 10 percent per annum averaged over a period of 3 consecutive years, or that compromises ecological integrity, or

“(ii) is depleted; or”.

(2) DETERMINATION OF OVERFISHING.—Section 304(c) (16 U.S.C. 1854(c)) is amended by adding at the end the following:

“(4) A determination by the Secretary described in paragraph (1)(D) (i) or (ii) shall constitute a determination of overfishing with respect to which a recovery plan is required under section 304(h). Notwithstanding the preceding sentence, the Secretary may determine that a fish species or population is not overfished, based on the best scientific information available, only if such determination is based on a clear preponderance of such scientific information. Nothing in this paragraph or paragraph (1) shall prevent a more stringent objective definition of overfishing under a fishery management plan, pursuant to section

1 304(e) or pursuant to a judicial determination. For the
2 purposes of paragraph (1)(D)(ii), a fish species or popu-
3 lation shall be considered to be depleted if it is determined
4 by the Secretary, using the best available scientific infor-
5 mation and a calculation that provides a risk-averse as-
6 sessment, that the spawning population is reduced to 20
7 percent or less than the unfished population, unless it is
8 shown, subject to review and approval by the Secretary,
9 that a smaller spawning population is adequate to provide
10 maximum sustainable yield and maintain ecological integ-
11 rity. If the size of the spawning population cannot be de-
12 termined, alternative measurements may be used subject
13 to approval by the Secretary.”.

14 (d) ESTABLISHMENT OF FEES.—Section 304(d) (16
15 U.S.C. 1854(d)) is amended—

16 (1) by inserting “(1)” before “The Secretary
17 shall”;

18 (2) striking “section 303(b)(1)” and inserting
19 “sections 303 and 304”;

20 (3) striking the third sentence; and

21 (4) by adding at the end the following new
22 paragraphs:

23 “(2) FEE SYSTEM REQUIREMENTS.—Any sys-
24 tem of fees established under this section shall—

1 “(A) provide that the total amount of fees
2 collected under this section not exceed the
3 amount equal to the difference of—

4 “(i) the combined cost of (I) station-
5 ing observers on board fishing vessels and
6 United States vessels and United States
7 fish processors (II) the actual cost of
8 inputting collected data, and (III) assess-
9 ments necessary for a risk sharing pool im-
10 plemented under subsection (e), minus

11 “(ii) any amount received for such
12 purpose from another source or from an
13 existing surplus in this National Fishery
14 Observer Fund established by paragraph
15 (3);

16 “(B) be fair and equitable to all partici-
17 pants in the fisheries under the jurisdiction of
18 any Council;

19 “(C) provide that fees collected not be used
20 to pay any costs of administrative overhead or
21 other costs not directly incurred in carrying out
22 the system;

23 “(D) not be used to offset amounts author-
24 ized under other provisions of law;

1 “(E) provide that fees shall be expressed
2 as a percentage, not to exceed 1 percent of the
3 wholesale or 2 percent of the ex-vessel value of
4 the fish and shellfish harvested under the juris-
5 diction of any Council;

6 “(F) provide that fees under that system
7 be assessed against all fishing vessels and Unit-
8 ed States processors participating in fisheries
9 under the jurisdiction of the Councils, including
10 those not required to carry an observer under
11 a fishery management plan;

12 “(G) provide that fees collected under the
13 system shall be deposited in the National Fish-
14 ery Observer Fund established by paragraph
15 (3);

16 “(H) provide that fees collected under the
17 system shall only be used for implementing re-
18 quirements relating to observers under fishery
19 management plans; and

20 “(I) comply with section 9701(b) of title
21 31, United States Code.

22 “(3) NATIONAL FISHERY OBSERVER FUND.—
23 There is established in the Treasury a separate ac-
24 count which shall be known as the National Fishery
25 Observer Fund. The Fund shall be available to the

1 Secretary, without appropriation or fiscal year limi-
2 tation, for carrying out this section, subject to the
3 restrictions in subsection (b)(2). The Fund shall
4 consist of all amounts received by the United States
5 as fees under this subsection. Amounts in the Fund
6 that are not currently needed for the purposes of
7 this section shall be kept on deposit or invested in
8 obligations of, or guaranteed by, the United
9 States.”.

10 (e) FISHERIES RESEARCH.—Section 304(e) (16
11 U.S.C. 1854(e)) is amended—

12 (1) in the heading by inserting “OVERFISHING
13 LIST AND” before “FISHERIES”;

14 (2) in paragraph (3)(A) by inserting after “deg-
15 radation,” the following: “identification of essential
16 fishery habitat,”; and

17 (3) by adding at the end the following new
18 paragraph:

19 “(5) No later than 1 year after the date of en-
20 actment of the Marine Fish Conservation Amend-
21 ments of 1994 and each year thereafter, the Sec-
22 retary shall, after consultation with and notice to the
23 appropriate Councils and based on the best scientific
24 information available, prepare and publish in the
25 Federal Register a list of fish species, populations,

1 and population complexes that are overfished and
2 the objective definition of overfishing utilized by the
3 Secretary to make that determination. Such deter-
4 mination shall be made whether or not a fishery
5 management plan is in effect for a species, popu-
6 lation, or population complex or contains an objec-
7 tive definition of overfishing, and is not required to
8 be in conformity with any such plan. In cases in
9 which scientific data are severely limited, the Sec-
10 retary's informed judgment may be used. In the case
11 of fish species, populations, and population com-
12 plexes for which there is insufficient information to
13 make such a determination, the Secretary shall de-
14 velop a research plan to identify and gather the
15 needed data. The plan shall—

16 “(A) identify priority research needed to
17 assess the condition of the relevant fish species,
18 populations, and population complexes and to
19 support fishery conservation and management;

20 “(B) describe a research program to con-
21 duct that research; and

22 “(C) indicate the timetable for conducting
23 that research, assess those conditions, and sup-
24 porting that conservation and management.”.

1 (f) FISHERIES UNDER AUTHORITY OF MORE THAN
2 ONE COUNCIL.—Section 304(f) (16 U.S.C. 1854(f)) is
3 amended—

4 (1) in paragraph (1), in the matter following
5 subparagraph (B), by striking “the voting members,
6 present and voting, of each Council concerned” and
7 inserting the following: “all of the combined individ-
8 ual voting members of the concerned Councils
9 present and voting”;

10 (2) by amending paragraph (3) to read as fol-
11 lows:

12 “(3) Any fishery management plan or amendment
13 which—

14 “(A) addresses a highly migratory species fish-
15 ery to which paragraph (1) applies,

16 “(B) was prepared by the Secretary, and

17 “(C) was in effect on July 1, 1993,

18 shall remain in effect until superseded by a fishery man-
19 agement plan or amendment prepared by the appropriate
20 Councils, and approved by the Secretary.”.

21 (g) RECOVERY PLANS.—Section 304 (16 U.S.C.
22 1854) is amended by adding at the end the following new
23 subsection:

24 “(h) RECOVERY PLANS.—(1) If the Secretary deter-
25 mines that a condition of overfishing has occurred with

1 respect to a fish species, population, or population complex
2 that is subject to a fishery management plan, based on
3 the best scientific information available and the definition
4 of overfishing specified in such plan, the Secretary shall
5 notify the appropriate Councils in writing of such deter-
6 mination.

7 “(2) Within 180 days after receiving such notice, the
8 appropriate Councils shall prepare and submit to the Sec-
9 retary for approval an amendment to the fishery manage-
10 ment plan, including a recovery plan that specifies—

11 “(A) the action or combination of actions to be
12 taken to rebuild the fish species, population, or pop-
13 ulation complex specified in the notice;

14 “(B) the time within which such rebuilding
15 shall be accomplished, which shall be no greater
16 than 5 years; and

17 “(C) the level of abundance to which such fish
18 populations or population complexes are to be rebuilt
19 to provide maximum sustainable yield and maintain
20 ecological integrity.

21 “(3) The time established pursuant to paragraph
22 (2)(B) for a recovery plan may be extended only upon a
23 determination by the Secretary, based upon the best avail-
24 able scientific information (which shall include at a mini-
25 mum information from annual progress reports made

1 under paragraph (5)), that a longer period will be required
2 due only to the reproductive capacity, productivity, or life
3 span of the fish species concerned.

4 “(4) The Secretary shall review and act upon such
5 amendment within 180 days after receipt and in accord-
6 ance with the procedures set forth in this section.

7 “(5) The Secretary shall review progress made in re-
8 building a species, population, or population complex
9 under a recovery plan under paragraph (2). The first re-
10 view shall occur no later than the beginning of the 3d year
11 in which the plan is in effect, and subsequent reviews shall
12 occur at least annually thereafter.”.

13 (h) BYCATCH RESEARCH.—Section 304 (16 U.S.C.
14 1854) is further amended by adding after subsection (h),
15 as added by subsection (g) of this section, the following
16 new subsection:

17 “(i) BYCATCH RESEARCH.—The Secretary shall es-
18 tablish, in cooperation with industry, a program for the
19 elimination of bycatch through fees and incentive pro-
20 grams. Amounts received as such fees shall be made avail-
21 able to the appropriate Councils for use exclusively for
22 bycatch related management activities, including costs of
23 observer programs and cooperative efforts with the Gov-
24 ernment on research and development of selective fishing

1 gear and other technological devices for the reduction of
2 bycatch.”.

3 (i) FISHERY HABITAT.—Section 304 (16 U.S.C.
4 1854) is further amended by adding after subsection (i)
5 as added by subsection (h) of this section, the following
6 new subsection:

7 “(j) HABITAT CONSERVATION.—(1) Within 6 months
8 after the date of the enactment of the Marine Fish Con-
9 servation Amendments of 1994 and every 12 months
10 thereafter, the Secretary shall publish in the Federal Reg-
11 ister and submit to the Congress a report on the cumu-
12 lative impacts of fishery habitats of the actions authorized,
13 funded, or carried out by Federal agencies, including an
14 assessment of how fishery habitats which are identified in
15 approved fishery management plans are being impacted.

16 “(2) Upon the request of a Council, the Secretary
17 shall immediately undertake a study to identify essential
18 fishery habitat of a fishery under the authority of the
19 Council, and the possible Federal and State actions which
20 could destroy or adversely modify such habitat. The Sec-
21 retary shall submit the results of such study to the Council
22 as soon as practicable, but not later than 12 months after
23 the date of such request.”.

24 (j) SPECIAL PROVISIONS REGARDING OBSERVERS.—
25 Section 304 of the Magnuson Fishery Conservation and

1 Management Act (16 U.S.C. 1854) is further amended by
2 adding after subsection (j), as added by subsection (i) of
3 this section, the following new subsection:

4 “(k) SPECIAL PROVISIONS REGARDING OBSERV-
5 ERS.—(1) The Secretary shall review—

6 “(A) the feasibility of establishing a risk shar-
7 ing pool through a reasonable fee, to provide cov-
8 erage for vessels and vessel owners against liability
9 from civil suits by observers, and

10 “(B) the availability of comprehensive commer-
11 cial insurance for vessel and owner liability against
12 civil suits by observers.

13 “(2) If the Secretary determines that a risk sharing
14 pool is feasible, the Secretary shall establish such a pool
15 unless the Secretary determines that—

16 “(A) comprehensive commercial insurance is
17 available for all fishing vessels and United States
18 fish processors required to have observers under this
19 section, and

20 “(B) such comprehensive commercial insurance
21 will provide a greater measure of coverage at a lower
22 cost to each participant.

23 “(3) The Secretary shall establish an alternative ob-
24 servation program for vessels on which facilities for quar-
25 tering of an observer, or for carrying out observer func-

1 tions, are inadequate to ensure the health or safety of the
2 observer or the safe operation of the vessel.”.

3 **SEC. 109. IMPLEMENTATION OF FISHERY MANAGEMENT**
4 **PLANS.**

5 (a) INTERIM MEASURES.—Section 305 (16 U.S.C.
6 1855) is amended—

7 (1) by redesignating subsections (c) through (e)
8 as subsections (d) through (f), respectively;

9 (2) by adding after subsection (b) the following
10 new subsection:

11 “(c) INTERIM MEASURES.—(1) In the absence of a
12 fishery management plan which contains such a provision,
13 the Secretary or the appropriate Council (subject to ap-
14 proval by the Secretary) may adopt as an interim measure
15 regulations with respect to any fish species, population,
16 or population complex consisting of specific provisions to
17 conserve such fish species, population, or population com-
18 plex, including a provision establishing a minimum size to
19 increase yield per recruit, prohibiting a type of fishing
20 gear or closing an area to fishing.

21 “(2) Any regulation under this subsection which
22 changes any existing fishery management plan shall be
23 treated as an amendment to such plan for the period in
24 which such regulation is in effect.

1 “(3) Any regulation under this subsection shall not
2 constitute a recovery plan for purposes of section 303 or
3 subsection (c) or (h) of this section. Any regulation under
4 this subsection shall remain in effect for 1 year after its
5 adoption, unless (A) it is specifically limited to a lesser
6 of effective period or superseded by a fishery management
7 plan or amendment thereto, or (B) the Secretary, initially
8 or before the expiration of the regulation, follows the pro-
9 cedures to review and approve the regulation that are ap-
10 plicable to a fishery management plan, or amendment to
11 a plan, under section 304.”.

12 (b) RESPONSIBILITY OF SECRETARY.—Section
13 305(e), as redesignated by subsection (a) of this section;
14 is amended by inserting “(1)” before “The Secretary
15 shall”; and by adding at the end the following new para-
16 graphs:

17 “(2) The Secretary shall comment on and make
18 recommendations concerning any action authorized,
19 funded, or carried out, or proposed to be authorized,
20 funded, or carried out, by any State or Federal
21 agency that may result in the destruction or adverse
22 modification of the essential habitat designated in a
23 fishery management plan approved under section
24 304.

1 “(3) Within 45 days after receiving a comment
2 or recommendation under paragraph (2), a Federal
3 agency shall provide a detailed response, in writing,
4 to the Secretary regarding the matter, including a
5 description of measures being considered by the
6 agency for avoiding, mitigating, or offsetting the im-
7 pact of the activity on such essential habitat.

8 “(4) Each Federal agency shall, in consultation
9 with the Secretary, ensure that any action author-
10 ized, funded, or carried out by the agency is not
11 likely to result in the destruction or adverse modi-
12 fication of the essential habitat of a fishery identi-
13 fied in a fishery management plan approved under
14 section 304.

15 “(5) The Secretary, after notice and oppor-
16 tunity for public hearing, may prohibit any action
17 authorized, funded, or carried out by a Federal
18 agency which the Secretary determines may result in
19 the destruction or adverse modification of essential
20 fishery habitat of a fishery identified in a fishery
21 management plan approved under section 304.”.

22 (c) CITIZEN SUITS PROVISION.—Section 305 (16
23 U.S.C. 1855) is further amended by adding at the end
24 the following new subsection:

25 “(g) CITIZEN SUITS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), any person may commence a civil action
3 on his or her own behalf against the Secretary if
4 there is alleged a violation of any provision of this
5 Act or any regulation promulgated thereunder, or a
6 failure of the Secretary to perform any act or duty
7 under this Act which is not discretionary with the
8 Secretary, or the appropriate Council, as the case
9 may be, to perform such act or duty.

10 “(2) NOTICE.—No action may be commenced
11 under paragraph (1) before the 60th calendar day
12 after the date on which the plaintiff gives notice of
13 the action to the Secretary and the affected Council
14 if the action is directed against such Council; except
15 that the action may be brought immediately after
16 such notification in the case of an action under this
17 section with respect to an emergency posing a sig-
18 nificant risk to the well-being of any fishery re-
19 source. Notice under this paragraph shall be given
20 in such manner as the Secretary shall prescribe by
21 regulation. Until the adoption of such regulation on
22 the manner of notice, delivery of notice upon the
23 Secretary by first class, prepaid United States mail,
24 with proof of mailing, shall satisfy the notice re-
25 quirement herein.

1 “(3) COSTS.—The court, in issuing any final
2 order in any suit brought pursuant to paragraph
3 (1), may award costs of litigation, including reason-
4 able attorney and expert witness fees, to any party
5 if the court determines such award is appropriate.

6 “(4) OTHER RIGHTS.—Nothing in this section
7 shall restrict or expand any right which any person
8 (or class of persons) may have under any statute or
9 common law to seek enforcement of any requirement
10 or to seek any other relief.

11 “(5) INTERVENTION.—In any action under this
12 section, any person may intervene as a matter of
13 right if such person has a direct interest which is or
14 may be adversely affected by the action and the dis-
15 position of the action may, as a practical matter, im-
16 pair or impede the person’s ability to protect that in-
17 terest, unless the United States or another party
18 shows that the person’s interest is adequately rep-
19 resented by existing parties in the action.”.

20 (d) CITIZEN PETITIONS.—Section 305 (16 U.S.C.
21 1855) is further amended by adding after subsection (g),
22 as added by subsection (c) of this section, the following
23 new subsection:

24 “(h) CITIZEN PETITIONS.—

1 “(1) IN GENERAL.—Any interested person may
2 petition the Secretary at any time to make any find-
3 ing or determination, or take any other action au-
4 thorized by this Act. The petition shall include such
5 substantial information as may be necessary to dem-
6 onstrate the need for the action requested by the pe-
7 tition.

8 “(2) CONSIDERATION AND RULING.—To the
9 maximum extent practicable, within 90 days after
10 receiving the petition of an interested person to
11 make a finding or determination, or take any other
12 action authorized by this Act, the Secretary shall
13 make a ruling as to whether the petition presents
14 substantial information indicating that the peti-
15 tioned action may be warranted. The Secretary shall
16 promptly publish such ruling in the Federal Register
17 and, if the petition is found to present such informa-
18 tion, the Secretary shall undertake to make a find-
19 ing or determination, or take any other action au-
20 thorized by the relevant provisions of this Act.”.

1 **TITLE II—AMENDMENTS TO THE**
2 **ATLANTIC TUNAS CONVEN-**
3 **TION ACT**

4 **SEC. 201. REGARDING HIGHLY MIGRATORY SPECIES.**

5 (a) **HIGHLY MIGRATORY SPECIES.**—Section 3(a) of
6 the Atlantic Tunas Convention Act of 1975 (16 U.S.C.
7 971a(a)) is amended—

8 (1) in paragraph (1) by striking the 2d and 3rd
9 sentences and inserting the following: “The Director
10 of the National Marine Fisheries Service or his or
11 her designee shall be one of the Commissioners, and
12 the other 2 Commissioners shall be appointed by and
13 serve at the pleasure of the President. A Commis-
14 sioner who is appointed by the President may not be
15 a salaried employee of a State, a political subdivision
16 of a State, or the Federal Government.”;

17 (2) by adding at the end the following new sen-
18 tence: “No Commissioner shall be an individual with
19 a financial interest or serving as an officer, director,
20 trustee, partner, or employee with an organization
21 that has a financial interest in any catching, har-
22 vesting, processing, or marketing activity that is un-
23 dertaken within any fishery over which the Commis-
24 sion has jurisdiction.”; and

1 (3) by striking paragraph (2) and redesignating
2 paragraph (3) as (2).

3 (b) ADMINISTRATION.—Section 6(c)(3) of the Atlan-
4 tic Tunas Convention Act of 1975 (16 U.S.C. 971d(c)(3))
5 is amended in the matter following subparagraph (K) by
6 striking “or decreasing”.

103D CONGRESS
2D SESSION

H. R. 4430

To amend the Magnuson Fishery Conservation and Management Act.

IN THE HOUSE OF REPRESENTATIVES

MAY 17, 1994

Mr. MANTON (for himself and Mr. STUDDS) (both by request) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Magnuson Fishery Conservation and Management Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 FINDINGS, PURPOSES, AND POLICY

4 SECTION 1. Section 2 of the Act (16 U.S.C. 1801)
5 is amended—

6 (1) in paragraph (a)(2) by—

7 (A) inserting “resource” between “fishery”
8 and “conservation”; and

9 (B) deleting “and” before “(B)”, and add-
10 ing after the second occurrence of “threatened”

1 “, and (C) direct and indirect habitat losses
2 have resulted in diminished capacity to support
3 existing fishing levels”;

4 (2) in paragraph (a)(6) by inserting “to provide
5 long-term protection for essential marine and estua-
6 rine fish habitats,” between “conservation,” and
7 “and to realize”;

8 (3) by adding new paragraphs (a) (9) and (10)
9 to read as follows:

10 “(9) The greatest long-term threat to the viabil-
11 ity of commercial and recreational fisheries is the
12 continuing loss of marine and estuarine habitats on
13 a national level. Habitat considerations must receive
14 increased attention in the conservation and manage-
15 ment of fishery resources of the United States.

16 “(10) Fishery habitat protection can be
17 achieved through direct advocacy for fishery habitats
18 by the Secretary in the implementation of existing
19 Federal procedures for interagency consultation and
20 the application of other Federal statutes under the
21 Secretary’s purview.”; and

22 (4) by adding a new paragraph (b)(7) to read
23 as follows:

24 “(7) to promote the advocacy of fishery habitat
25 protection in the review of projects conducted under

1 Federal permits, licenses, or other authorities that
2 affect, or have the potential to affect, fishery
3 habitats.”.

4 DEFINITIONS

5 SEC. 2. Section 3 of the Act (16 U.S.C. 1802) is
6 amended—

7 (1) by renumbering subsections (6) through
8 (31) as subsections (7) through (32), respectively,
9 and by adding a new subsection (6) as follows:

10 “(6) The term ‘essential fish habitat’ means
11 any area formally identified by a Council or by the
12 Secretary for species managed under section
13 304(g)(3) that is—

14 “(A) landward of the outer boundary of
15 the exclusive economic zone and essential to the
16 life cycle of marine, estuarine, anadromous, or
17 catadromous species; or

18 “(B) essential to the production of opti-
19 mum yield throughout the range of one or more
20 fisheries under management by a Council or by
21 the Secretary under section 304(g)(3); or

22 “(C) meeting other criteria or guidance as
23 provided by the Secretary to the Councils.”;
24 and

(2) by further amending renumbered section 3(22) of the Act by revising the text and adding a new paragraph (C) to read as follows:

“(22) The term ‘optimum’, with respect to the yield from a fishery, means the amount of fish—

“(A) which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities;

“(B) which is prescribed on the basis of the maximum sustainable yield from a fishery, as modified by any relevant economic, social, or ecological factor; and

“(C) which ensures the rebuilding of depleted stocks to a level consistent with producing the maximum sustainable yield.”.

FOREIGN FISHING

SEC. 3. (a) Section 201(a)(1) of the Act (16 U.S.C. 1821(a)(1)) is revised to read as follows:

“(1) is authorized under subsection (b) or (c), or is approved under section 204(b)(6)(A)(ii);”.

(b) Section 201 of the Act (16 U.S.C. 1821) is amended by deleting section (g), (h), (i), and (j) as subsections 201(f), and by redesignating subsections (f), (g), (h), and (i), respectively.

1 PERMITS FOR FOREIGN FISHING

2 SEC. 4. (a) Section 204(b)(1) of the Act (16 U.S.C.
3 1824(b)(1)) is amended to read as follows:

4 “(b) APPLICATIONS AND PERMITS.—

5 “(1) ELIGIBILITY.—(A) Except as provided in
6 subparagraph (B), each foreign nation with which
7 the United States has entered into a governing
8 international fishery agreement shall submit an ap-
9 plication to the Secretary of State each year for a
10 permit for each of its fishing vessels that wishes to
11 engage in fishing described in subsection (a).

12 “(B) An owner of a vessel other than a vessel
13 of the United States, who wishes to engage in the
14 transshipment at sea of fish products in the exclu-
15 sive economic zone or within the boundary of any
16 State, may submit an application to the Secretary
17 each year for a permit for a vessel belonging to that
18 owner, whether or not such vessel is subject to an
19 international fishery agreement described in section
20 201 (b) or (c).

21 “(C) No permit issued under this section may
22 be valid for longer than a year; and section 558(c)
23 of title 5, United States Code, does not apply to the
24 renewal of any such permit.”

6

1 (b) Section 204(b)(4) of the Act (16 U.S.C.
2 1824(b)(4)) is amended by—

3 (1) inserting “submitted under paragraph
4 (1)(A)” after the words “any application”;

5 (2) redesignating subparagraphs (A), (B), and
6 (C) as subparagraphs (i), (ii) and (iii);

7 (3) redesignating paragraph (4) as paragraph
8 (4)(A); and

9 (4) inserting a new paragraph (4)(B) to read as
10 follows:

11 “(B) Upon receipt of any application sub-
12 mitted under paragraph (1)(B) which complies
13 with the requirements of paragraph (3), the
14 Secretary shall promptly transmit copies of the
15 application or summary as indicated under sub-
16 paragraphs (A)(ii) and (iii).”.

17 (c) Section 204(b)(5) of the Act (16 U.S.C.
18 1824(b)(5)) is amended by replacing the words “under
19 paragraph (4)(C)” with the words “submitted under para-
20 graph (1)(A)”.

21 (d) Section 204(b)(6) of the Act (16 U.S.C.
22 1824(b)(6)) is amended by—

23 (1) replacing the phrase “transmitted under
24 paragraph (4)(A)” with the phrase “submitted
25 under paragraph 1(A)” in paragraph (6)(A);

1 (2) redesignating paragraph (6)(A) as para-
2 graph (6)(A)(i); and

3 (3) adding a new subparagraph (A)(ii), as fol-
4 lows:

5 “(ii) In the case of any application submit-
6 ted under paragraph (1)(B), the Secretary may
7 approve the application upon determining that
8 the activity described in the application will be
9 in the interest of the United States and will
10 meet the applicable requirements of this Act,
11 and that the owners or operators have agreed
12 to comply with requirements set forth in section
13 201(c)(2) and have established any bonds or fi-
14 nancial assurances that may be required by the
15 Secretary; or the Secretary may disapprove all
16 or any portion of the application.”.

17 (e) Section 204(b)(8) of the Act (16 U.S.C.
18 1824(b)(8)) is amended by inserting the words “, or the
19 agent for the foreign vessel owner for any application sub-
20 mitted under paragraph (1)(B)” at the end of subpara-
21 graph (A).

22 (f) Section 204(b)(9) of the Act (16 U.S.C.
23 1824(b)(9)) is amended by—

24 (1) inserting the words “paragraph (1)(A) of”
25 after the phrase “by a foreign nation under”;

(2) redesignating paragraph (9) as paragraph (9)(A); and

(3) adding a new paragraph (9)(B) to read as follows:

“(B) If the Secretary does not approve any application submitted by a foreign vessel owner under paragraph (1)(B) of this subsection, the Secretary shall promptly inform the vessel owner of the disapproval and the reasons therefor. The owner, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.”.

(g) Section 204(b)(11) of the Act (16 U.S.C. 1824(b)(11)) is amended by—

(1) inserting the words “submitting an application under paragraph (1)(A)” after the words “If a foreign nation”;

(2) redesignating paragraph (11) as paragraph (11)(A); and

(3) adding a new paragraph (11)(B), to read as follows:

“(B) If the vessel owner submitting an application under paragraph (1)(B) notifies the Secretary of acceptance of the conditions and restrictions established by the Secretary under

1 paragraph (7), and upon payment of the appli-
2 cable fees established pursuant to paragraph
3 (10) and confirmation of any bonds or financial
4 assurances that may be required for such fish-
5 ing, the Secretary shall thereupon issue a per-
6 mit for the vessel.”.

7 LARGE-SCALE DRIFTNET FISHING

8 SEC. 5. Section 206 of the Act (16 U.S.C. 1826) is
9 amended by deleting subsection 206(e), and by redesignat-
10 ing subsections (f), (g), and (h) as subsections (e), (f),
11 and (g), respectively.

12 NATIONAL STANDARDS FOR FISHERY CONSERVATION AND
13 MANAGEMENT

14 SEC. 6. (a) Section 301(a) of the Act (16 U.S.C.
15 1851) is amended by revising subsection (1) to read as
16 follows:

17 “(1) Conservation and management measures
18 shall prevent overfishing and rebuild depleted stocks.
19 Such measures shall be designed to achieve, on a
20 continuing basis, the optimum yield from each fish-
21 ery.”.

22 (b) Section 301(a) of the Act (16 U.S.C. 1851) is
23 amended by adding a new subsection 8 to read as follows:

24 “(8) Conservation and management measures
25 shall, to the extent practicable, minimize the inciden-
26 tal catch of non-target living marine resources that

1 results in the unnecessary waste of those re-
2 sources.”.

3 REGIONAL FISHERY MANAGEMENT COUNCILS

4 SEC. 7. (a) Section 302(a) of the Act (16 U.S.C.
5 1852(a)) is amended by revising subsection (a)(6) to read
6 as follows:

7 “(6) PACIFIC COUNCIL.—The Pacific Fishery
8 Management Council shall consist of the States of
9 California, Oregon, Washington, and Idaho and shall
10 have authority over the fisheries in the Pacific
11 Ocean seaward of such States. The Pacific Council
12 shall have 14 voting members, including 8 appointed
13 by the Secretary in accordance with subsection
14 (b)(2) (at least one of whom shall be appointed from
15 each such State), and including one appointed from
16 an Indian tribe with Federally recognized fishing
17 rights from California, Oregon, Washington, or
18 Idaho.”.

19 (b) Section 302(b) of the Act (16 U.S.C. 1852(b))
20 is amended—

21 (1) by revising paragraph (C) of subsection
22 (b)(1) to read as follows:

23 “(C) The members required to be ap-
24 pointed by the Secretary in accordance with
25 subsections (b) (2) and (5)”;

1 (2) by renumbering subsection (5) as subsection
2 (6), and inserting a new subsection (5) to read as
3 follows:

4 “(5)(A) The Secretary shall appoint to the Pa-
5 cific Fishery Management Council one representa-
6 tive, designated by the Secretary of the Interior, of
7 an Indian tribe with Federally recognized fishing
8 rights from California, Oregon, Washington, or
9 Idaho, from a list of not less than three individuals
10 submitted by the tribal governments. The represent-
11 ative shall serve for a term of three years and may
12 not be reappointed to the consecutive term.

13 “(B) Representation shall be rotated among the
14 tribes taking into consideration—

15 “(i) the qualifications of the individuals on
16 the list referred to in subparagraph (A),

17 “(ii) the various treaty rights of the Indian
18 tribes involved and judicial cases that set forth
19 how those rights are to be exercised, and

20 “(iii) the geographic area in which the
21 tribe of the representative is located.

22 “(C) A vacancy occurring prior to the expira-
23 tion of any term shall be filled in the same manner
24 set out in subparagraphs (A) and (B), except that
25 the Secretary may use the list from which the

1 vacating representative was chosen. A representative
2 appointed to fill such a vacancy may not be
3 reappointed to a consecutive term.”; and

4 (3) by replacing the words “subsection (b)(2)”
5 in renumbered subsection (6) with the words “sub-
6 sections (b) (2) and (5)”.

7 (c) Section 302(h) of the Act (16 U.S.C. 1852(h))
8 is amended by redesignating subparagraphs (2) through
9 (6) as subparagraphs (3) through (7), respectively, and
10 by adding a new subparagraph (2) as follows:

11 “(2) take immediate action to prepare an
12 amendment to the applicable fishery management
13 plan or to submit proposed regulations—

14 “(A) to prevent overfishing of a stock or
15 stock complex, as defined in the fishery man-
16 agement plan, from occurring whenever such
17 stock or stock complex, as identified under sec-
18 tion 304(h), is determined to be approaching an
19 overfished condition, or

20 “(B) to stop overfishing of the stock or
21 stock complex, and to restore the stock to a
22 condition that is consistent with producing the
23 maximum sustainable yield when such stock or
24 stock complex is determined to be overfished.

1 A Council shall submit a plan amendment or pro-
2 posed regulations to the Secretary within 1 year
3 from the date of transmittal of the report on the
4 status of stocks, as required under section 304(h),
5 to the Council for those stocks that are approaching
6 a condition of being overfished or are overfished.”

7 (d) Section 302(i) of the Act (16 U.S.C. 1853(i)) is
8 amended—

9 (1) in subparagraph (1)(A) by deleting “and”
10 before “(B)”;

11 (2) in subparagraph (1)(B) by deleting the pe-
12 riod and replacing it with “; and”;

13 (3) by adding a new subparagraph (1)(C) to
14 read:

15 “(C) shall be responsible for identifying es-
16 sential fish habitats.”; and

17 (4) by adding a new paragraph (3) as follows:

18 “(3) By December 31, 1995, and annually
19 thereafter, the Councils shall submit for publication
20 by the Secretary a listing of all essential fish habi-
21 tats identified pursuant to subparagraph (1)(C) for
22 all fishery management plans in effect on that
23 date.”.

24 (e) Section 302(k) of the Act (16 U.S.C. 1852(k))
25 is amended by adding a new subparagraph (8) as follows:

1 “(8)(A) An affected individual who has a finan-
2 cial interest that would be significantly affected by
3 a Council decision may not participate in the Coun-
4 cil’s deliberations relating to that decision, unless
5 such individual receives a written authorization
6 under subparagraph (B) or (C) below. An affected
7 individual who may not participate may comment or
8 testify on the decision as a member of the public.

9 “(B)(i) At the request of an affected individual,
10 or at the initiative of the appropriate regional direc-
11 tor, the regional director shall make a determination
12 for the record whether the individual has a financial
13 interest that would be significantly affected by a
14 Council decision.

15 “(ii) If the regional director determines that an
16 affected individual’s financial interest would be sig-
17 nificantly affected by a Council decision, the regional
18 director may authorize the individual’s participation
19 in the decision if the director determines in writing
20 that the need for the individual’s participation out-
21 weighs the potential for a conflict of interest.

22 “(C) Any Council member may submit a writ-
23 ten request to the Assistant Administrator for Fish-
24 eries, National Oceanic and Atmospheric Adminis-
25 tration, to review any determination by the regional

1 director under subparagraph (B). Such review shall
2 be completed within 90 days of receipt of the re-
3 quest.

4 “(D) If the Council makes a decision before the
5 Assistant Administrator for Fisheries has reviewed a
6 determination or authorization under subparagraph
7 (C), the eventual ruling may not be treated as cause
8 for the invalidation or reconsideration of the deci-
9 sion.

10 “(E) The Secretary is authorized to issue
11 guidelines with respect to making the determinations
12 under sections 8 (A) and (B).”.

13 CONTENTS OF FISHERY MANAGEMENT PLANS

14 SEC. 8. Section 303 of the Act (16 U.S.C. 1853) is
15 amended in its entirety to read as follows:

16 **“SEC. 303. CONTENTS OF FISHERY MANAGEMENT PLANS**
17 **AND REGULATIONS.**

18 “(a) FISHERY MANAGEMENT PLANS.—Before under-
19 taking management of any fishery, the Council or the Sec-
20 retary shall prepare a fishery management plan, which
21 shall—

22 “(1) contain a description of the fishery, includ-
23 ing, but not limited to, the number of vessels in-
24 volved, the type and quantity of fishing gear used,
25 the species of fish involved and their location, the
26 cost likely to be incurred in management, actual and

1 potential revenues from the fishery, any recreational
2 interest in the fishery, and the nature and extent of
3 foreign fishing and Indian treaty fishing rights, if
4 any;

5 “(2) assess the impact of the fishery on the
6 physical environment, with particular attention to
7 protected species and habitat, and to any stocks of
8 naturally spawning anadromous fish in the region;

9 “(3) identify the problems to be addressed and
10 management objectives to be achieved in regulating
11 the fishery, and outline the primary alternative ap-
12 proaches to resolving the problems and achieving the
13 objectives;

14 “(4) specify an objective and measurable defini-
15 tion of overfishing for each stock or stock complex
16 in the fishery;

17 “(5) assess and specify the present and prob-
18 able future condition of, and the maximum sustain-
19 able yield and optimum yield from, the fishery, and
20 include a summary of the information utilized in
21 making such specification;

22 “(6) establish a process for specifying—

23 “(A) the capacity and the extent to which
24 fishing vessels of the United States, on an an-
25 nual basis, will harvest the optimum yield,

1 “(B) the portion of such optimum yield
2 which, on an annual basis, will not be harvested
3 by fishing vessels of the United States and can
4 be made available for foreign fishing, and

5 “(C) the capacity and extent to which
6 United States fish processors, on an annual
7 basis, will process that portion of such optimum
8 yield that will be harvested by fishing vessels of
9 the United States;

10 “(7) assess and specify the nature and extent of
11 scientific data that are needed for effective manage-
12 ment of the fishery; and

13 “(8) contain a description, based on guidelines
14 developed by the Secretary, of all essential fish habi-
15 tats including—

16 “(A) the characteristics that make the
17 habitats essential to the conservation and man-
18 agement of the particular fishery for which the
19 plan was prepared;

20 “(B) the threats facing the continued via-
21 bility of each essential fish habitat for the long-
22 term maintenance of the specific fishery;

23 “(C) the adequacy of the existing regu-
24 latory regime in providing long-term protection
25 for these habitats; and

“(D) recommendations for regulatory and nonregulatory actions that should be considered to ensure the long-term protection of these habitats.

“(b) TRANSITION.—Councils are encouraged to prepare fishery management plans under the new format to replace existing fishery management plans. However, any fishery management plan that has not been replaced by 1 year from enactment shall be deemed a plan for the purposes of the amended Act; the plan’s conservation and management measures shall be deemed deleted from the document.

“(c) REGULATIONS.—Regulations promulgated to conserve and manage a fishery—

“(1) shall contain the conservation and management measures, applicable to foreign fishing and fishing by vessels of the United States, that are—

“(A) necessary and appropriate for the conservation and management of the fishery to prevent overfishing, and to protect, restore, and promote the long-term health and stability of the fishery;

“(B) described in this subsection; and

“(C) consistent with the national standards, the other provisions of this Act, regula-

1 tions implementing recommendations by inter-
2 national organizations in which the United
3 States participates (including but not limited to
4 closed areas, quotas, and size limits), and any
5 other applicable law;

6 “(2) shall specify the pertinent data that shall
7 be submitted to the Secretary with respect to the
8 fishery, including, but not limited to, information re-
9 garding the type and quantity of fishing gear used,
10 catch by species in numbers of fish or weight there-
11 of, areas in which fishing was engaged in, time of
12 fishing, number of hauls, and the estimated process-
13 ing capacity of, and the actual processing capacity
14 utilized by, United States fish processors;

15 “(3) may consider and provide for temporary
16 adjustments, after consultation with the Coast
17 Guard and persons utilizing the fishery, regarding
18 access to the fishery for vessels otherwise prevented
19 from harvesting because of weather or other ocean
20 conditions affecting the safe conduct of the fishery;
21 except that the adjustment shall not adversely affect
22 conservation efforts in other fisheries or discriminate
23 among participants in the affected fishery;

24 “(4) may require a permit to be obtained from
25 the Secretary, with respect to—

1 “(A) any fishing vessel of the United
2 States fishing, or wishing to fish, in the exclu-
3 sive economic zone or for anadromous species
4 or Continental Shelf fishery resources beyond
5 such zone;

6 “(B) the operator of any such vessel; and

7 “(C) any United States fish processor who
8 first receives fish that are subject to the regula-
9 tions;

10 “(5) may designate zones where, and periods
11 when, fishing shall be limited, or shall not be per-
12 mitted, or shall be permitted only by specified types
13 of fishing vessels or with specified types and quan-
14 tities of fishing gear;

15 “(6) may establish specified limitations on the
16 catch of fish (based on area, species, size, number,
17 weight, sex, incidental catch, total biomass, or other
18 factors), which are necessary and appropriate for the
19 conservation and management of the fishery;

20 “(7) may prohibit, limit, condition, or require
21 the use of specified types and quantities of fishing
22 gear, fishing vessels, or equipment for such vessels,
23 including devices which may be required to facilitate
24 enforcement of the provisions of this Act;

1 “(8) may incorporate consistent with the na-
2 tional standards, the other provisions of this Act,
3 and any other applicable law) the relevant fishery
4 conservation and management measures of the
5 coastal States nearest to the fishery;

6 “(9)(A) may establish a system for limiting ac-
7 cess to the fishery in order to achieve optimum yield
8 if, in developing such system, the Council and the
9 Secretary take into account—

10 “(i) present participation in the fishery,

11 “(ii) historical fishing practices in, and de-
12 pendence on, the fishery,

13 “(iii) the economics of the fishery,

14 “(iv) the capability of fishing vessels used
15 in the fishery to engage in other fisheries,

16 “(v) the cultural and social framework rel-
17 evant to the fishery, and

18 “(vi) any other relevant considerations;

19 “(B) However, regulations may not establish
20 such a limited access system, except for fisheries
21 managed under section 304(g)(3), unless such sys-
22 tem is first approved by a majority of the voting
23 members, present and voting, of each appropriate
24 Council;

1 “(10) may require fish processors who first re-
2 ceive fish that are subject to the regulations to sub-
3 mit data which are necessary for the conservation
4 and management of the fishery;

5 “(11) may require that observers be carried on
6 board a vessel of the United States engaged in fish-
7 ing for species that are subject to the regulations,
8 for the purpose of collecting data necessary for the
9 conservation and management of the fishery; except
10 that such a vessel shall not be required to carry an
11 observer on board if the facilities of the vessel for
12 the quartering of an observer, or for carrying out
13 observer functions, are so inadequate or unsafe that
14 the health or safety of the observer or the safe oper-
15 ation of the vessel would be jeopardized; and

16 “(12) may prescribe such other measures, re-
17 quirements, or conditions and restrictions as are de-
18 termined to be necessary and appropriate for the
19 conservation and management of the fishery.

20 “(d) CONFIDENTIALITY OF STATISTICS.—Any statis-
21 tic submitted to the Secretary by any person in compliance
22 with any requirement under regulations promulgated
23 under section 305 shall be confidential and shall not be
24 disclosed, for a period of three years following the year
25 of submission to the Secretary, except—

1 “(1) to Federal employees and Council employ-
2 ees who are responsible for management plan devel-
3 opment and monitoring;

4 “(2) to State employees pursuant to an agree-
5 ment with the Secretary that prevents public disclo-
6 sure of the identity or business of any person; or

7 “(3) when required by court order.

8 The Secretary shall, by regulation, prescribe such proce-
9 dures as may be necessary to preserve such confidentiality,
10 except that the Secretary may release or make public any
11 such statistics in any aggregate or summary form which
12 does not directly or indirectly disclose the identity or busi-
13 ness of any person who submits such statistics. Nothing
14 in this subsection shall be interpreted or construed to pre-
15 vent the use for conservation and management purposes
16 by the Secretary, or with the approval of the Secretary,
17 the Council, of any statistic submitted in compliance with
18 a requirement under regulations promulgated under sec-
19 tion 305.

20 “(e) RESTRICTION ON USE OF CERTAIN DATA.—The
21 Secretary shall promulgate regulations to restrict the use,
22 in civil enforcement or criminal proceedings under this
23 Act, the Marine Mammal Protection Act of 1972 (16
24 U.S.C. 1361 et seq.), or the Endangered Species Act (16
25 U.S.C. 1531 et seq.), of information collected by voluntary

1 fishery data collectors, including sea samplers, while
2 aboard any vessel for conservation and management pur-
3 poses if the presence of such a fishery data collector
4 aboard is not required by any of such Acts or regulations
5 thereunder.”.

6 PRE-RULEMAKING PROCEDURES

7 SEC. 9. Section 304 of the Act “**ACTION BY THE**
8 **SECRETARY**” (16 U.S.C. 1854) is amended in its entirety
9 to read as follows:

10 “**SEC. 304. PRE-RULEMAKING PROCEDURES.**

11 “(a) DATA COLLECTION PROGRAMS.—

12 “(1) If a Council determines that additional in-
13 formation and data (other than information and
14 data that would disclose proprietary or confidential
15 commercial or financial information regarding fish-
16 ing operations or fish processing operations) would
17 be beneficial for the purposes of determining wheth-
18 er a fishery is in need of management, the Council
19 may request that the Secretary implement a data
20 collection program for the fishery which would pro-
21 vide the types of information and data (other than
22 information and data that would disclose proprietary
23 or confidential commercial or financial information
24 regarding fishing operations or fish processing oper-
25 ations) specified by the Council. The Secretary shall
26 approve such a data collection program if he deter-

1 mines that the need is justified, and shall promul-
2 gate regulations to implement the program within
3 60 days after such determination is made. If the
4 Secretary determines that the need for a data collec-
5 tion program is not justified, the Secretary shall in-
6 form the Council of the reasons for such determina-
7 tion in writing. The determinations of the Secretary
8 under this subsection regarding a Council request
9 shall be made within a reasonable period of time
10 after he receives that request.

11 “(2) The Secretary shall establish by regulation
12 a nation-wide mandatory data collection program to
13 provide basic fisheries performance data. The pro-
14 gram shall—

15 “(A) integrate data collection programs
16 under existing fishery management plans into a
17 non-duplicative data collection and management
18 system;

19 “(B) include all species of fish within the
20 geographical areas of authority of the Councils;
21 and

22 “(C) coordinate with other data collection
23 programs conducted by the Secretary, other
24 Federal agencies, or by the States, to ensure
25 completeness and to avoid duplication.

1 “(b) FISHERIES RESEARCH.—

2 “(1) The Secretary shall initiate and maintain,
3 in cooperation with the Councils, a comprehensive
4 program of fishery research to carry out and further
5 the purposes policy, and provisions of this Act. Such
6 program shall be designed to acquire knowledge and
7 information, including statistics, on fishery conserva-
8 tion and management and on the economics of the
9 fisheries.

10 “(2) Within 1 year after the date of enactment
11 of the Fishery Conservation Amendments of 1990,
12 and at least every three years thereafter, the Sec-
13 retary shall develop publish in the Federal Register
14 a strategic plan for fisheries research for the 5 years
15 immediately following such publication. The plan
16 shall—

17 “(A) identify and describe a comprehensive
18 program with a limited number of priority ob-
19 jectives for research in each of the areas speci-
20 fied in paragraph (2);

21 “(B) indicate the goals and timetables for
22 the program described in subparagraph (A);
23 and

1 “(C) provide a role for affected commercial
2 fishermen in such research, including involve-
3 ment in field testing.

4 “(3) The areas of research referred to in para-
5 graph (a) are as follows:

6 “(A) Research to support fishery conserva-
7 tion and management, including research on
8 the economics of fisheries and biological re-
9 search concerning the interdependence of fish-
10 eries or stocks or fish, the impact of pollution
11 on fish populations, the impact of wetland and
12 estuarine degradation, and other matters bear-
13 ing upon the abundance and availability of fish.

14 “(B) Conservation engineering research,
15 including the study of fish behavior and the de-
16 velopment and testing of new gear technology
17 and fishing techniques to minimize the harvest
18 of nontarget species and promote efficient har-
19 vest of target species.

20 “(C) Information management research,
21 including the development of a fishery informa-
22 tion base and an information management sys-
23 tem that will permit the full use of data in the
24 support of effective fishery conservation and
25 management.

1 “(4) In developing the plan required under
2 paragraph (1), the Secretary shall consult with rel-
3 evant federal agencies, scientific and technical ex-
4 perts, and other interested persons, public and pri-
5 vate, and shall publish a proposed plan in the Fed-
6 eral Register for the purpose of receiving public
7 comment on the plan. The Secretary shall ensure
8 that affected commercial fishermen are actively in-
9 volved in the development of the portion of the plan
10 pertaining to conservation engineering research.
11 Upon final publication in the Federal Register, the
12 plan shall be submitted by the Secretary to the Com-
13 mittee on Commerce, Science, and Transportation of
14 the Senate and the Committee on Merchant Marine
15 and Fisheries of the House of Representatives.

16 “(c) INCIDENTAL HARVEST RESEARCH.—

17 “(1) Within 9 months after the date of enact-
18 ment of the Fishery Conservation Amendments of
19 1990, the Secretary shall, after consultation with the
20 Gulf of Mexico Fishery Management Council and
21 South Atlantic Fishery Management Council, estab-
22 lish by regulation a 3-year program to assess the im-
23 pact on fishery resources of incidental harvest by the
24 shrimp trawl fishery within the authority of such
25 Councils.

1 “(2) The program established pursuant to para-
2 graph (1) shall provide for the identification of
3 stocks of fish which are subject to significant inci-
4 dental harvest in the course of normal shrimp trawl
5 fishing activity.

6 “(3) For stocks of fish identified pursuant to
7 paragraph (2), with priority given to stocks which
8 (based upon the best available scientific information)
9 are considered to be overfished, the Secretary shall
10 conduct—

11 “(A) a program to collect and evaluate
12 data on the nature and extent (including the
13 spatial and temporal distribution) of incidental
14 mortality of such stocks as a direct result of
15 shrimp trawl fishing activities;

16 “(B) an assessment of the status and con-
17 dition of such stocks, including collection of in-
18 formation which would allow the estimation of
19 life history parameters with sufficient accuracy
20 and precision to support sound scientific evalua-
21 tion of the effects of various management alter-
22 natives on the status of such stocks; and

23 “(C) a program of data collection and eval-
24 uation for such stocks on the magnitude and
25 distribution of fishing mortality and fishing ef-

1 fort by sources of fishing mortality other than
2 shrimp trawl fishing activity.

3 “(4) The Secretary shall, in cooperation with
4 affected interests, commence a program to design,
5 and evaluate the efficacy of, technological devices
6 and other changes in fishing technology for the re-
7 duction of incidental mortality of nontarget fishery
8 resources in the course of shrimp trawl fishing activ-
9 ity. Such program shall take into account local con-
10 ditions and include evaluation of any reduction in in-
11 cidental mortality, as well as any reduction or in-
12 crease in the retention of shrimp in the course of
13 normal fishing activity.

14 “(5) The Secretary shall, upon completion of
15 the programs required by this subsection, submit a
16 detailed report on the results of such programs to
17 the Committee on Commerce, Science, and Trans-
18 portation of the Senate and the Committee on Mer-
19 chant Marine and Fisheries of the House of Rep-
20 resentative.

21 “(d) ACTION BY THE SECRETARY AFTER RECEIPT
22 OF PLAN.—After the Secretary receives a fishery manage-
23 ment plan, or amendment to such plan, which was pre-
24 pared by a Council, the Secretary shall—

1 “(1) immediately commence a review of the
2 management plan or amendment to determine
3 whether it is consistent with the national standards,
4 the other provisions of this Act, and any other appli-
5 cable law; and

6 “(2) immediately publish in the Federal Reg-
7 ister a notice stating that the plan or amendment is
8 available and that written data, views, or comments
9 of interested persons on the document or amend-
10 ment may be submitted to the Secretary during the
11 45-day period beginning on the date the notice is
12 published.

13 “(e) REVIEW BY THE SECRETARY.—

14 “(1) In undertaking the review required under
15 paragraph (d)(1), the Secretary shall—

16 “(A) take into account the data, views, and
17 comments received from interested persons;

18 “(B) consult with the Secretary of State
19 with respect to foreign fishing;

20 “(C) consult with the Secretary of the de-
21 partment in which the Coast Guard is operating
22 with respect to enforcement at sea and to fish-
23 ery access adjustments referred to in section
24 303(c)(3); and

1 “(D) consult with the Secretary of the In-
2 terior with respect to plans that affect anad-
3 romous fisheries.

4 “(2) The Secretary shall approve, disapprove,
5 or partially disapprove a plan or amendment within
6 30 days of the end of the comment period under
7 subsection (d)(2) by written notice to the Council. A
8 notice of disapproval or partial disapproval shall
9 specify—

10 “(A) the applicable law with which the
11 plan or amendment is inconsistent;

12 “(B) the nature of such inconsistency(ies);
13 and

14 “(C) recommendations concerning the ac-
15 tions that could be taken by the Council to con-
16 form such plan or amendment to the require-
17 ments of applicable law.

18 “(3)(A) If the Secretary disapproves or par-
19 tially disapproves a plan or amendment, the Council
20 may submit a revised plan or amendment to the Sec-
21 retary.

22 “(B) After the Secretary receives a revised plan
23 or amendment the Secretary shall follow the proce-
24 dures specified in subsections (d) and (e).

25 “(f) PREPARATION BY THE SECRETARY.—

1 “(1) The Secretary may prepare a fishery man-
2 agement plan, with respect to any fishery, or any
3 amendment to any such plan, in accordance with the
4 national standards, the other provisions of this Act,
5 and any other applicable law, if—

6 “(A) the appropriate Council fails to de-
7 velop and submit to the Secretary, after a rea-
8 sonable period of time, a fishery management
9 plan for such fishery, or any necessary amend-
10 ment to such plan, if such fishery requires con-
11 servation and management; or

12 “(B) the Secretary disapproves or partially
13 disapproves any such plan or amendment, or
14 disapproves a revised plan or amendment, and
15 the Council involved fails to submit a revised or
16 further revised plan or amendment, as the case
17 may be.

18 In preparing any such plan or amendment, the Sec-
19 retary shall consult with the Secretary of State with
20 respect to foreign fishing and with the Secretary of
21 the department in which the Coast Guard is operat-
22 ing with respect to enforcement at sea.

23 “(2) The Secretary shall prepare a fishery man-
24 agement plan amendment or proposed regulations if
25 the appropriate Council fails to submit an amend-

1 ment or proposed regulations to the Secretary,
2 under section 302(h)(2), within 1 year after deter-
3 mining that any managed stock is overfished.

4 “(3)(A) Whenever, under paragraph (1), the
5 Secretary prepares a fishery management plan or
6 amendment, the Secretary shall immediately—

7 “(i) submit such plan or amendment to the
8 appropriate Council for consideration and com-
9 ment; and

10 “(ii) publish in the Federal Register a no-
11 tice stating that the plan or amendment is
12 available and that written data, views, or com-
13 ments of interested persons on the plan or
14 amendment may be submitted to the Secretary
15 during the 45-day period beginning on the date
16 the notice is published.

17 “(B) The appropriate Council must submit its
18 comments and recommendations, if any, regarding
19 the plan or amendment to the Secretary before the
20 close of the 45-day period referred to in subpara-
21 graph (A)(ii). After the close of such 45-day period,
22 the Secretary, after taking into account any such
23 comments and recommendations, as well as any
24 views, data, or comments submitted under subpara-
25 graph (A)(ii), may adopt such plan or amendment.

1 “(g) FISHERIES UNDER AUTHORITY OF MORE THAN
2 ONE COUNCIL.—

3 “(1) Except as provided in paragraph (3), if
4 any fishery extends beyond the geographical area of
5 authority of any one Council, the Secretary may—

6 “(A) designate which Council shall prepare
7 the fishery management plan for such fishery
8 and any amendment to such plan, and prepare
9 proposed regulations for such fishery; and

10 “(B) may require that the plan, amend-
11 ment, and proposed regulations be prepared
12 jointly by the Councils concerned.

13 No jointly prepared fishery management plan,
14 amendment, or proposed regulations may be submit-
15 ted to the Secretary, unless approved by a majority
16 of the voting members, present and voting, of each
17 Council concerned.

18 “(2) The Secretary shall establish the bound-
19 aries between the geographical areas of authority of
20 adjacent Councils.

21 “(3)(A) The Secretary shall have authority over
22 any highly migratory species fishery that is within
23 the geographical area of authority of more than one
24 of the following Councils: New England Council,

1 Mid-Atlantic Council, South Atlantic Council, Gulf
2 Council, and Caribbean Council.

3 “(B) In accordance with the provisions of this
4 Act and any other applicable law, the Secretary
5 shall—

6 “(i) identify research and information pri-
7 orities, including observer requirements and
8 necessary data collection and analysis for the
9 conservation and management of highly migra-
10 tory species;

11 “(ii) prepare and amend fishery manage-
12 ment plan with respect to highly migratory spe-
13 cies fisheries to which this paragraph applies;
14 and

15 “(iii) diligently pursue, through inter-
16 national entities (such as the International
17 Commission for the Conservation of Atlantic
18 Tunas), international fishery management
19 measures with respect to fishing for highly mi-
20 gratory species.

21 “(C) In preparing or amending any fishery
22 management plan and in promulgating any regula-
23 tions for fisheries covered by this paragraph, the
24 Secretary shall—

1 “(i) conduct public hearings, at appropriate times and in appropriate locations in the
2 geographical areas concerned, so as to allow interested persons an opportunity to be heard in
3 the preparation and amendment of the plan and
4 regulations;
5

6 “(ii) consult with and consider the comments and views of commissioners and advisory
7 groups appointed under Acts implementing relevant international fishery agreements pertaining
8 to highly migratory species;
9

10 “(iii) consult with and consider the comments and views of affected Councils;
11

12 “(iv) evaluate the likely effects, if any, of conservation and management measures on participants in the affected fisheries and minimize,
13 to the extent practicable, any disadvantage to
14 United States fishermen in relation to foreign
15 competitors; and
16

17 “(v) review, on a continuing basis (and promptly whenever a recommendation pertaining
18 to fishing for highly migratory species has
19 been made under a relevant international fishery agreement), and revise as appropriate, the
20
21
22
23
24

1 conservation and management measures for the
2 fishery.

3 “(D) Conservation and management measures
4 adopted under this paragraph shall—

5 “(i) take into consideration traditional
6 fishing patterns of fishing vessels of the United
7 States and the operating requirements of the
8 fisheries;

9 “(ii) be fair and equitable in allocating
10 fishing privileges among United States fisher-
11 men and not have economic allocation as the
12 sole purpose; and

13 “(iii) promote international conservation.

14 “(E) In implementing the provisions of this
15 paragraph, the Secretary shall consult with—

16 “(i) the Secretary of State;

17 “(ii) commissioners and advisory groups
18 appointed under Acts implementing relevant
19 international fishery agreements pertaining to
20 highly migratory species; and

21 “(iii) appropriate Councils.

22 “(h) REPORT ON STATUS OF STOCKS.—The Sec-
23 retary shall report annually to the Councils the status of
24 stocks under their jurisdiction and identify those stocks

1 that are approaching a condition of being overfished or
2 are overfished.”.

3 RULEMAKING

4 SEC. 10. Section 305 of the Act “**IMPLEMENTA-**
5 **TION OF FISHERY MANAGEMENT PLANS**” (16 U.S.C.
6 1854) is amended in its entirety to read as follows:

7 “**SEC. 305. RULEMAKING.**

8 “(a) **PROPOSED REGULATIONS.—**

9 “(1) The Council may submit proposed regula-
10 tions consistent with an approved plan or amend-
11 ment, following public hearings as specified in sec-
12 tion 302(h), for action by the Secretary under this
13 section.

14 “(A) Such regulations shall be accom-
15 panied by a fishery impact statement which
16 shall assess, specify, and describe the likely ef-
17 fects, if any, of the regulations on—

18 “(i) participants in the fisheries af-
19 fected by the regulations; and

20 “(ii) participants in the fisheries con-
21 ducted in adjacent areas under the author-
22 ity of another Council, after consultation
23 with such Council and representatives of
24 those participants.

25 “(B) After the Secretary receives proposed
26 regulations prepared by a Council, the Sec-

1 retary shall immediately make a preliminary
2 evaluation of the proposed regulations for pur-
3 poses of deciding if they are consistent with the
4 fishery management plan and the national
5 standards.

6 “(C) If that decision is affirmative, the
7 Secretary shall immediately publish such regu-
8 lations, with such changes as may be necessary
9 for clarity or enforceability, in the Federal Reg-
10 ister, together with an explanation of those
11 changes.

12 “(D) If that decision is negative, the Sec-
13 retary shall notify the Council in writing of the
14 inconsistencies.

15 “(2) The Secretary may promulgate proposed
16 regulations consistent with any plan or amendment
17 prepared by the Secretary.

18 “(3) The comment period on proposed regula-
19 tions shall be 45 days, except that the Secretary
20 may shorten the comment period on minor revisions
21 to existing rules.

22 “(b) IMPLEMENTATION.—The Secretary shall pro-
23 mulgate final regulations within 45 days after the end of
24 the comment period under subsection (a)(3). The Sec-
25 retary must publish an explanation of any substantive dif-

1 ferences between the proposed and final rules. All final
2 regulations must be consistent with the plan, with the na-
3 tional standards and other provisions of this Act, and with
4 other applicable law.

5 “(c) EMERGENCY ACTIONS.—

6 “(1) If the Secretary finds that an emergency
7 exists involving any fishery, he may promulgate
8 emergency regulations necessary to address the
9 emergency, without regard to whether a fishery
10 management plan exists for such fishery.

11 “(2) If a Council finds that an emergency exists
12 involving any fishery within its jurisdiction, whether
13 or not a fishery management plan exists for such
14 fishery—

15 “(A) the Secretary shall promulgate emer-
16 gency regulations under paragraph (1) to ad-
17 dress the emergency if the Council, by unani-
18 mous vote of the members who are voting mem-
19 bers, requests the taking of such actions; and

20 “(B) The Secretary may promulgate emer-
21 gency regulations under paragraph (1) to ad-
22 dress the emergency if the Council, by less than
23 a unanimous vote, requests the taking of such
24 action.

1 “(3) Any emergency regulation which is incon-
2 sistent with an existing fishery management plan
3 shall be treated as an amendment to such document
4 for the period in which such regulation is in effect.
5 Any emergency regulation promulgated under this
6 subsection—

7 “(A) shall be published in the Federal
8 Register together with the reasons therefor;

9 “(B) shall remain in effect for not more
10 than 90 days after the date of publication, ex-
11 cept that any such regulation may be promul-
12 gated for an additional period of not more than
13 270 days: *Provided*, That the public has had an
14 opportunity to comment on the emergency regu-
15 lation, and, in the case of a Council rec-
16 ommendation for emergency regulations, the
17 Council is actively preparing a fishery manage-
18 ment plan, amendment, or proposed regulations
19 to address the emergency on a permanent basis;

20 “(C) that responds to a public health
21 emergency may remain in effect until the cir-
22 cumstances that created the emergency no
23 longer exist, provided the public has an oppor-
24 tunity to comment after the regulation is pub-
25 lished; and

1 “(D) may be terminated by the Secretary
2 at an earlier date by publication in the Federal
3 Register of a notice of termination, except for
4 emergency regulations promulgated under para-
5 graph (2) in which case such early termination
6 may be made only upon the agreement of the
7 Secretary and the Council concerned.

8 “(d) ESTABLISHMENT OF FEES.—

9 “(1) The Secretary may establish fees for any
10 permit issued pursuant to this Act. The level of any
11 such fees shall be fair and equitable to all partici-
12 pants in the fisheries, and meet the requirements of
13 section 9701(b) of title 31, United States Code. The
14 Secretary may enter into a cooperative agreement
15 with the States concerned, under which the States
16 administer the permit system; the agreement may
17 provide that all or part of the fees collected under
18 this system shall accrue to the States.

19 “(2) The Secretary may establish fees by regu-
20 lation to pay the costs of implementing conservation
21 and management measures authorized by this Act,
22 when it is determined by the Secretary that partici-
23 pants in the fishery will receive direct and substan-
24 tial benefits from such measures. The level of any
25 such fees shall be fair and equitable to all partici-

1 pants in the fisheries, and meet the requirements of
2 section 9701(b) of title 31, United States Code.

3 “(3) The Secretary shall establish fees on the
4 value of fish authorized to be taken under individual
5 harvest shares assigned to persons or vessels pursu-
6 ant to a limited access system. Fees assessed under
7 this paragraph shall not exceed 3 percent annually
8 of the value of fish authorized to be taken under in-
9 dividual harvest shares. The Secretary shall, by reg-
10 ulation, prescribe the method of determining the
11 value of fish authorized to be taken by such shares,
12 the amount of each respective fee on an annual
13 basis, and the method of collecting such fees.

14 “(4) The Secretary shall establish fees on the
15 ex-vessel value of all fish upon the first sale within
16 the jurisdiction of the United States. Fees under
17 this paragraph shall not exceed one percent of the
18 value of such fish. The Secretary shall, by regula-
19 tion, prescribe the method of determining the value
20 of such fish and the method of collecting such fees.

21 “(e) FEES CONTINGENT ON APPROPRIATIONS.—The
22 fees authorized in subsection (d) shall be collected, cred-
23 ited to the Operations, Research, and Facilities appropria-
24 tion, and available until expended for the purposes speci-

1 fied in subsection (f), only to the extent and in the
2 amounts provided in advance in appropriations Acts.

3 “(f) USE OF FEES.—Fees authorized in subsection
4 (d) may be expended for the following purposes—

5 “(1) collecting, processing, and analyzing eco-
6 nomie, social, biological, and statistical information
7 concerning marine recreational and commercial fish-
8 ing and supporting activities;

9 “(2) placing observers on domestic fishing ves-
10 sels;

11 “(3) conducting scientific research and publish-
12 ing information concerning abundance, distribution,
13 and ecology of marine fish;

14 “(4) conserving and managing stocks of marine
15 fish, including, but not limited to, developing, mon-
16 itoring, and implementing fishery management plans
17 and regulations;

18 “(5) improving enforcement of marine conserva-
19 tion programs;

20 “(6) educating resource users and the general
21 public on aspects of marine conservation programs;

22 “(7) carrying out the other provisions of this
23 Act; and

24 “(8) reducing harvesting capacity, including the
25 removal from a fishery of fishing vessels and permits

1 issued by the United States Government for fishing
2 privileges if the Secretary finds that—

3 “(A) the fishery, for which a fishery man-
4 agement plan is prepared, is determined to be
5 overfished as defined within that plan;

6 “(B) the fishery is materially affected by a
7 fishery management plan’s stock recovery re-
8 quirements;

9 “(C) the fishery is economically depressed;
10 and

11 “(D) the fishery is managed pursuant to a
12 limited access program under section 303(c)(9)
13 of the Act.

14 “(g) RESPONSIBILITY OF THE SECRETARY.—The
15 Secretary shall have general responsibility to carry out the
16 provisions of this Act. The Secretary may promulgate such
17 regulations, in accordance with section 553 of title 5,
18 United States Code, as may be necessary to discharge
19 such responsibility.

20 “(h) EFFECT OF CERTAIN LAWS ON CERTAIN TIME
21 REQUIREMENTS.—The Paperwork Reduction Act of 1980
22 (44 U.S.C. 3501 et seq.), the Regulatory Flexibility Act
23 (5 U.S.C. 601 et seq.), and Executive Order Numbered
24 12866, dated September 30, 1993, shall be complied with
25 within the time limitations specified in subsection (b) as

1 they apply to the functions of the Secretary under such
2 provisions.

3 “(i) JUDICIAL REVIEW.—

4 “(1) Regulations promulgated by the Secretary
5 under this Act and actions described in paragraph
6 (2) shall be subject to judicial review to the extent
7 authorized by, and in accordance with, chapter 7 of
8 title 5, United States Code, if a complaint for such
9 review is filed within 30 days after the date on
10 which the regulations are promulgated or the action
11 is published in the Federal Register, as applicable;
12 except that—

13 “(A) section 705 of such title is not appli-
14 cable, and

15 “(B) the appropriate court shall only set
16 aside any such regulation or action on a ground
17 specified in section 706(2) (A), (B), (C), or (D)
18 of such title.

19 “(2) The actions referred to in paragraph (1)
20 are actions that are taken by the Secretary under
21 regulations which implement a fishery management
22 plan, including but not limited to actions that estab-
23 lish the date of closure of a fishery to commercial or
24 recreational fishing.

1 “(3)(A) Notwithstanding any other provision of
2 law, the Secretary shall file a response to any com-
3 plaint filed in accordance with paragraph (1), not
4 later than 45 days after the date the Secretary is
5 served with that complaint, except that the appro-
6 priate court may extend the period for filing such a
7 response upon a showing by the Secretary of good
8 cause for that extension.

9 “(B) A response of the Secretary under this
10 paragraph shall include a copy of the administrative
11 record for the regulations that are the subject of the
12 petition.

13 “(4) Upon a motion by the person who files a
14 complaint under this subsection, the appropriate
15 court shall assign the matter for hearing at the ear-
16 liest possible date and shall expedite the matter in
17 every possible way.”.

18 STATE JURISDICTION

19 SEC. 11. Section 306(c)(1) of the Act (16 U.S.C.
20 1856(c)(1)) is amended by—

21 (1) deleting the word “and” from subparagraph
22 1(A);

23 (2) deleting the period from the end of subpara-
24 graph (B) and replacing it with “; and”; and

25 (3) by inserting immediately after subpara-
26 graph (B) of the following new subparagraph:

1 “(C) the owner or operator of the vessel
2 submits reports on the tonnage of fish received
3 from U.S. vessels and the locations from which
4 such fish were harvested, in accordance with
5 such procedures as the Secretary by regulation
6 shall prescribe.”.

7 PROHIBITED ACTS

8 SEC. 12. (a) Section 307(1)(L) of the Act (16 U.S.C.
9 1857(1)(L)) is amended to read as follows:

10 “(L) to forcibly assault, resist, oppose, im-
11 pede, intimidate, or interfere with any observer
12 on a vessel under this Act, or any data collector
13 employed by or under contract to the National
14 Marine Fisheries Service;”.

15 (b) Section 307(1)(M) of the Act (16 U.S.C.
16 1857(1)(M)) is amended by deleting “; or” after the word
17 “nation” and inserting the following: “: *Provided, That—*

18 “(i) a vessel used to engage in large-scale
19 driftnet fishing is deemed to be subject to the juris-
20 diction of the United States if it is used to engage
21 in such fishing shoreward of the outer boundary of
22 the exclusive economic zone of the United States, it
23 is a vessel of the United States, it is a stateless ves-
24 sel, or it is a foreign-flag vessel and the flag-state
25 authorizes the United States to exercise jurisdiction
26 over it, and

1 “(ii) it shall be a rebuttable presumption that
2 any vessel that is shoreward of the outer boundary
3 of the exclusive economic zone of the United States
4 or beyond the exclusive economic zone of any nation,
5 and that has onboard gear that is capable of use for
6 large-scale driftnet fishing, is engaged in such fish-
7 ing; or”.

8 (c) Section 307(2)(A) of the Act (16 U.S.C.
9 1857(2)(A)) is amended to read as follows:

10 “(A) in fishing within the boundaries of
11 any State, except—

12 “(i) recreational fishing permitted
13 under section 201(i),

14 “(ii) fish processing permitted under
15 section 306(e), or

16 “(iii) transshipment at sea of fish
17 products within the boundaries of any
18 State in accordance with a permit ap-
19 proved under section 204(b)(6)(A)(ii);”.

20 (d) Section 307(3) of the Act (16 U.S.C. 1857(3))
21 is amended to read:

22 “(3) for any vessel of the United States, and
23 for the owner or operator of any vessel of the United
24 States, to transfer at sea directly or indirectly, or at-
25 tempt to so transfer at sea, any United States har-

1 vested fish to any foreign fishing vessel, while such
2 foreign vessel is within the exclusive economic zone
3 or within the boundaries of any State except to the
4 extent that the foreign fishing vessel has been per-
5 mitted under section 204(b)(6)(B) or section 306(c)
6 to receive such fish;”.

7 (e) Section 307(4) of the Act (16 U.S.C. § 1857(4))
8 is amended by adding after the word “zone” the following
9 phrase, “or within the boundaries of any State”.

10 CIVIL PENALTIES AND PERMIT SANCTIONS

11 SEC. 13. (a) Section 308(b) of the Act (16 U.S.C.
12 1858(b)) is amended by deleting the first sentence and
13 substituting the following: “Any person against whom a
14 civil penalty is assessed under subsection (a), or against
15 whom a permit sanction is imposed under subsection (g)
16 (other than a permit suspension for nonpayment of pen-
17 alty or fine), may obtain review thereof in the United
18 States district court for the appropriate district by filing
19 a complaint against the Secretary in such court within 30
20 days from the date of such order.”.

21 (b) Section 308(g)(1)(C) of the Act (16 U.S.C.
22 1858(g)(1)(C)) is amended to read as follows:

23 “(C) any amount in settlement of a civil
24 forfeiture imposed on a vessel or other property,
25 or any civil penalty or criminal fine imposed on
26 a vessel or owner or operator of a vessel or any

1 other person who has been issued or has ap-
2 plied for a permit under any fishery resource
3 law statute enforced by the Secretary, has
4 not been paid and is overdue, the Secretary
5 may—”.

6 ENFORCEMENT

7 SEC. 14. (a) Section 311(e)(1) of the Act (16 U.S.C.
8 1861(e)(1)) is amended by—

9 (1) substituting the word “marine” for the
10 word “fishery” in the chapeau, and in subpara-
11 graphs (A) and (B); and

12 (2) by amending subparagraph (E) to read as
13 follows:

14 “(E) claims of parties in interest to prop-
15 erty disposed of under section 612(b) of the
16 Tariff Act of 1930 (19 U.S.C. 1612(b)), as
17 made applicable by section 310(c) of this Act or
18 by any other marine resource law enforced by
19 the Secretary, to seizures made by the Sec-
20 retary, in amounts determined by the Secretary
21 to be applicable to such claims at the time of
22 seizure; and”.

23 (b) Section 311(e)(2) of the Act (16 U.S.C.
24 1861(e)(2)) is amended to read as follows:

25 “(2) Any person found in an administrative or
26 judicial proceeding to have committed any violation

1 of this Act or any other marine resource law en-
2 forced by the Secretary shall be liable for the cost
3 incurred in the sale, storage, care, and maintenance
4 of any fish or other property seized in connection
5 with the violation.”.

6 OBSERVERS WAGES AS MARITIME LIENS

7 SEC. 15. The Act is amended by adding the following
8 new section:

9 “SEC. 312. OBSERVERS’ WAGES AS SEAMEN’S
10 LIENS.—Claims for observers’ wages shall be considered
11 maritime liens against the vessel and be accorded the same
12 priority as seamen’s liens under admiralty and general
13 maritime law.”.

14 CONFORMING AMENDMENTS

15 SEC. 16. (a) Section 2(b)(4) of the Act is amended
16 by replacing the words “fishery management plan” with
17 the words “conservation and management measures”.

18 (b) Section 2(b)(5) of the Act is amended by replac-
19 ing, each time it appears, the word “plans” with the word
20 “measures”.

21 (c) Section 3(31) of the Act is amended by replacing
22 the words “for which a fishery management plan prepared
23 under title III or a preliminary fishery management plan
24 prepared under section 201(h) has been implemented”
25 with the words “regulated under this Act”.

1 (d) Section 201(c) of the Act is amended by deleting
2 the phrase “, including any regulations promulgated to
3 implement any applicable fishery management plan or any
4 preliminary fishery management plan”.

5 (e) Section 201 of the Act (16 U.S.C. 1821) is
6 amended by replacing “(g)” in subsection (a)(2) with
7 “(f)” and by replacing “(i)” in subsection (c)(2)(D) with
8 “(h)”.

9 (f) Section 201(g) of the Act is amended by replacing
10 the words “no fishery management plan for that fishery
11 will be prepared and implemented” with the words “no
12 regulations for that fishery will be promulgated”; by re-
13 placing the phrase “303(a)(5)” with the phrase
14 “303(c)(2)”; by replacing the phrase “303(b)(2), (3), (4),
15 (5), and (7)” with the phrase “303(c)(5), (6), (7), (8),
16 and (10)”; by replacing the words “a fishery management
17 plan is prepared and implemented” with the words “regu-
18 lations are promulgated”; and, in the final sentence, by
19 deleting the words “implementing the applicable fishery
20 management plan”.

21 (g) Section 201(h) of the Act is amended by replacing
22 the words “management plans” with the word “regula-
23 tions”.

1 (h) Section 201(i) of the Act is amended by replacing
2 the words "fishery management plan implemented" with
3 the words "regulations promulgated".

4 (i) Section 204(b)(7)(A) of the Act is amended to
5 read as follows:

6 " (A) All of the requirements of regulations
7 promulgated under section 201(g) or under title
8 III."

9 (j) Section 302(h)(3) of the Act (16 U.S.C. 1852(h))
10 is amended by replacing "204(b)(4)(C)" with
11 "204(b)(4)(A)(iii)".

12 (k) Section 302(h)(4) of the Act is amended by re-
13 placing the words "fishery management plans and amend-
14 ments to such plans" with the word "regulations".

15 (l) Section 302(h)(6) of the Act is amended by replac-
16 ing the phrase "303(a) (3) and (4)" with the phrase
17 "303(a) (5) and (6)", and by replacing the phrase
18 "304(f)(3)" with the phrase "304(g)(3)".

19 (m) Section 306(b)(1) of the Act is amended by re-
20 placing in subsection (A), the words "covered by a fishery
21 management plan implemented" with the words "regula-
22 tions promulgated"; by replacing, in subsection (B), the
23 words "fishery management plan" with the word "regula-
24 tions"; and by replacing the words "such fishery manage-
25 ment plan and the regulations promulgated to implement

1 such plan” with the words “regulations promulgated for
2 such fishery”.

3 (n) Section 307(1)(J)(i) of the Act is amended by de-
4 leting the words “American Lobster Fishery Management
5 Plan, as implemented by” and the words “, or any succes-
6 sor to that plan, implemented under this title”.

7 (o) Section 307(2)(B) of the Act (16 U.S.C.
8 § 1857(2)(B)) is amended by replacing “201(j)” with
9 “201(i)”.

10 (p) Section 311(f) of the Act is amended by replacing
11 the words “Fishery Management Plan” in the subhead
12 with the word “Regulations”; by replacing the words
13 “Fishery Management Plan” in subsection (1) with the
14 word “regulations”; by replacing the words “fishery man-
15 agement plan approved” in subsection (2) with the words
16 “regulations promulgated”; by replacing the words “under
17 the Northeast Multispecies Fishery Management Plan” in
18 subsection (3) with the words “for the Northeast
19 Multispecies fishery”; and by replacing, in subsection (4),
20 the words “Fishery Management Plan” with the word
21 “regulations” and the words “that Plan” with the words
22 “those regulations”.

23 (q) Section 314(c) of the Act is amended by revising
24 the subhead to read “**MANAGEMENT OF**
25 **UNDERUTILIZED SPECIES**”; by adding the Phrase “and

1 regulations" after "fishery management plans"; and by re-
2 placing the words "covered under such a plan" with the
3 words "regulated under this Act".

4 AUTHORIZATION OF APPROPRIATIONS

5 SEC. 17. Section 406 of the Act (16 U.S.C. 1882)
6 is amended by adding at the end the following new para-
7 graph:

8 "(20) \$103,218,000 for the fiscal year ending
9 September 30, 1994, \$142,502,000 for the fiscal
10 year ending September 30, 1995, and such sums as
11 may be necessary for fiscal year 1996."

STATEMENT OF PURPOSE AND NEED

The Magnuson Fishery Conservation and Management Act establishes United States jurisdiction over certain marine fishery resources and prescribes the exercise of that jurisdiction. The authorization of appropriations for carrying out the provisions of the Act expired on September 30, 1993. The purpose of the draft bill is to authorize appropriations for fiscal years 1994, 1995, and 1996, and to make the following amendments to the Act.

FINDINGS, PURPOSE, AND POLICY

Section 1 would amend sections 2 (a) and (b) of the Act to emphasize the importance of habitat protection and the need for interagency attention to actions and issues that may adversely affect the fishery habitat.

DEFINITIONS

Section 2(a) would also add a new term "essential fish habitat" to section 3(7) of the Act as a guide to the identification of areas of habitat that are considered essential to the production of optimum yield from one or more fisheries under management by a Council. These habitats include areas used for spawning, nursery, feeding and migration, as well as other areas that are vital for life cycle functions of specific fisheries.

Section 2 (c) would revise the definition of "optimum yield" (OY) to add a new Part (C) as a complement to amended national standard 1 that requires the rebuilding of depleted stocks, and

to define the level to which those depleted stocks must be rebuilt. This change provides that stocks should be rebuilt to a level consistent with that necessary to produce the maximum sustainable yield (MSY), i.e., the long term average for the stock and a level that can be measured for management purposes. This requirement does not negate the provision in Part (B) which allows MSY to be modified by any relevant economic, social or ecological factor to arrive at a calculation for optimum yield. For any given year, when the population size is at or near MSY, fishing mortality could be permitted at a level that would be greater than that necessary to maintain the population at MSY. However, if as a result of allowing fishing at the OY level, the population itself declines, fishing effort would have to be controlled to rebuild the stock to the MSY level. In this case, managers would be prohibited from modifying the harvest level for economic or social reasons.

FOREIGN FISHING

Section 3(a) would amend Section 201(a)(1) of the Act to add to the Secretary's authority for approval of foreign fishing applications. Specifically, the paragraph would authorize the approval of applications under section 204(b)(6)(A), as amended, for the transshipment of U.S. caught fishery products by foreign carriers when deemed to be in the interest of the United States, particularly in cases in which domestic carriers are not available.

Section 3(b) would amend section 201 of the Act to delete the requirement that the Secretaries of Commerce and State prepare a foreign allocation report for submission to Congress and the President by July 1 of each year. The report is intended to highlight countries using trade barriers to restrict imports of U.S. products, thereby reducing competition for fishery products taken by foreign fishermen and joint venture operations in the U.S. Exclusive Economic Zone (EEZ). With the "Americanization" of the fisheries off the U.S. coast, foreign fishing opportunities are no longer useful leverage for the United States to negotiate reductions in trade barriers to U.S. exports. Because of these developments, the report lacks any practical value, and its requirement should be eliminated from the Act.

PERMITS FOR FOREIGN FISHING

Section 4 would amend section 204 of the Act to allow the Secretary to issue a permit to foreign vessels for transshipment of fish products in the absence of a governing international fishery agreement (GIFA), when that permit is in the interest of the United States, and all fees have been paid and other requirements are met. The Magnuson Act requires foreign transshipment to satisfy the same GIFA, application, and permit requirements as are required of foreign nations whose vessels and owners engage in the catching, taking and processing of fish in the EEZ. Very few nations currently have GIFA's with the United States, although the U.S. fishing industry often must rely on the

availability of foreign refrigerated transports to transship its production from the EEZ to foreign markets because of the lack of available U.S. vessels.

Requiring the same qualification criteria for foreign transshipment activities as are required for catching, taking, or processing operations by foreign fishing vessels is overly burdensome and time consuming, as well as unnecessary to management's needs. Foreign fishing, such as joint ventures, will continue to be authorized only under a GIFA; however, the approval of foreign transshipments at sea in the EEZ or within the boundary of any state that are found to be in the interest of the United States will be encouraged by not subjecting them to the same stringent approval requirements as for harvesting vessels.

LARGE-SCALE DRIFTNET FISHING

Section 5 would delete section 206(e) of the Act to eliminate the requirement that a Driftnet Report be prepared annually. The purposes of the section have been met, with Japan, Korea and Taiwan agreeing and publicly committing to the implementation of the United Nations Resolution calling for a moratorium on the use of driftnets after December 31, 1992. As a result, the report is no longer necessary.

NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

Section 6(a) would amend section 301(a) (1) of the Act to add the phrase "rebuild depleted stocks" to the requirement to prevent overfishing. The phrase "rebuild depleted stocks" is necessary to require rebuilding stocks when they become depleted and in need of rebuilding. This concept only applies to stocks whose population has been drawn down so as to jeopardize sustainable production. As noted in the amendment to the definition of "optimum yield" in section 2(c), this provision focuses on the level of the stock in question, and requires control of fishing mortality when the current population size of the stock is reduced. Rebuilding, therefore, should only apply to situations in which stocks have become depleted, i.e., below a level that is necessary to allow production at the maximum sustainable level.

Section 6(b) would amend section 301(a) of the Act to add a new national standard 8 that would require conservation and management measures to minimize incidental catches that result in the waste of living marine resources. This standard seeks to have fishery managers develop measures, where possible, that will eliminate the unnecessary, destructive, and wasteful take of non-target species that has significantly drawn down the populations of many of our marine resources. This new standard recognizes that not all incidental catch is bad (i.e., legal incidental take of cod in a haddock fishery). Rather, it focuses on the incidental catch that wastes a living marine resource, in

whatever form, such as discarding and highgrading. The use of "living marine resources" is necessary to specifically include marine mammals or threatened/endangered species.

REGIONAL FISHERY MANAGEMENT COUNCILS

Sections 7(a) and (b) would amend sections 302(a) and (b) of the Act (16 U.S.C. 1852) to provide an additional seat on the Pacific Council for a representative of Indian tribes of California, Oregon, Washington, or Idaho that have Federally recognized fishing rights. The representative would be appointed by the Secretary of Commerce, as designated by the Secretary of Interior from a list of not less than three individuals nominated by the appropriate tribal governments. Representation would be rotated among the tribes and each appointed representative would serve for a term of three years and not be reappointed for a consecutive term.

Although Indian representatives have been appointed to the Pacific Council from among the nominees provided by the Governors of the Pacific Council's constituent states, there is no assurance that the Governors will include such nominees for consideration during each appointment cycle. This amendment will ensure that Treaty Indians have continuity of representation on the Pacific Council.

Section 7(c) would amend section 302(h) of the Act to require a

Regional Fishery Management Council to prepare a fishery management plan amendment to prevent a stock or stock complex approaching an overfished condition from becoming overfished, or to rectify an overfished condition in that stock or stock complex. Council action is required within 1 year of the Council receiving a report from the Secretary that the stock is approaching an overfished condition, or is overfished, based on the definition of overfishing contained in the plan.

Section 7(d) would amend section 302(i) of the Act to require the Regional Fishery Management Councils to publish an annual listing beginning in December 1995 of all essential fish habitats for all fishery management plans in effect. This listing is intended to provide a ready reference for all projects being developed that may affect fishery habitat, and for all reviewing officials of those projects.

Section 7(e) would amend section 302(k) of the Act, to preclude a Council member from participating in a decision that would significantly affect the member's financial interest. The NMFS Regional Director, at his own initiative or at the request of the affected individual, would determine whether a Council member is barred from participating in a particular decision; he could authorize participation if he determines that the need for the member's participation outweighs the potential for a conflict of interest. The Assistant Administrator (AA) for Fisheries would,

upon request of any Council member, review the Regional Director's determinations. If the Council decision were made before the AA's review, the eventual ruling would not affect the validity of the action.

This amendment, which leaves intact the Council members' financial disclosure requirements and exemption from 18 U.S.C. 208, would eliminate the perception or potential that any member's vote on an issue before the Council is influenced by the member's financial interests related to the issue.

CONTENTS OF FISHERY MANAGEMENT PLANS

Section 8 would replace Section 303 of the Act in its entirety by reordering the provisions of the section regarding the contents of fishery management plans and regulations. The amendment would focus more effort and attention on the important fishery regulations that represent the requirements the industry and public must comply with. This would be done by removing the requirement for extensive, detailed fishery management plans (FMPs).

Currently, the FMPs have become cumbersome documents that can be confusing because of their size and complexity. They are also largely redundant to other documents required by law (Environmental Impact Statement, Fishery Impact Statements, Regulatory Flexibility Analyses). The Act currently requires

FMPs to contain all necessary conservation and management measures. The amendment would remove these measures from the FMP and, instead, have the Councils prepare proposed regulations incorporating all the management measures. The "new" fishery management plan is envisioned as a 10-15 page document that summarizes the fishery, problems, objectives, alternatives and impacts. Appropriate references would be made to the EIS, FIS, RFA, etc. for more detail, if needed.

The benefit of this amendment would be to make the rulemaking process more flexible and more timely. The Councils could change management measures fairly substantially without first amending the FMP. All necessary analysis of the effects of proposed measures would be done in compliance with NEPA, the Regulatory Flexibility Act, and other applicable law. The revision of section 303 would not change significantly the current roles of the Secretary and the Councils.

In addition to reordering the provisions of the FMP, section 8 includes several amendments to the existing provisions. A new paragraph (9) is added to amended section 303(a) requiring each fishery management plan to contain a description of all essential fish habitats. The word "essential" in the term "essential fish habitat" was selected in order to avoid confusion with the term "critical habitat" which is used in the Endangered Species Act. This provision would require the Councils, through fishery

management plans (FMPs), to be responsible for administering a program to identify essential habitats in their geographical area of concern. Once habitats are identified as essential, other Federal agencies would be able to provide special consideration for these areas in permitting, licensing, and construction decisions.

Section 303(c)(4) of the Act, as amended, is revised to delete the phrase "and fees to be paid to" from the requirement to obtain a permit from the Secretary. The authority to collect fees and the requirement for fees to be paid is fully contained in amended section 305(d), and, therefore, no longer need be referenced in section 303(c)(4).

Section 303(c)(10) of the Act, as amended, is revised to provide for the collection of economic data from processors, as is now required from harvesting and other entities in the industry. Economic data for processors, as well as fishermen, are necessary to meet the requirements of the Magnuson Act and other applicable law, including national standard 1 (calculation of optimum yield), national standard 7 (minimizing costs including those on processors), and the National Environmental Policy Act and Executive Order 12291 (economic/social analyses).

Section 8 amends section 303(d) to establish a three-year limit on maintaining the confidentiality of data. Currently, the Act

requires the Secretary to prescribe by regulation (50 CFR 603) procedures to preserve in perpetuity the confidentiality of data submitted by fishermen or processors. The intent is to prevent the disclosure of the identity or business of any person who submits such statistics. The confidentiality protection of data under the current section affords little benefit beyond the three-year period, but causes many difficulties in efficiently accessing the data for both the authorized users and administrators of the data. The requirement for maintaining data confidentiality permanently also results in extreme administrative costs and burdens. Preserving the confidentiality of data forever, for example, requires maintaining complex data management access and control systems in perpetuity, with significant personnel and computer storage and programming costs. This amendment strikes a careful balance between protecting the business practices of individuals and allowing the public access to information on users and uses of the Nation's fisheries resources.

PRE-RULEMAKING PROCEDURES

Section 9 would replace section 304 of the Act (ACTION BY THE SECRETARY) in its entirety with necessary provisions to address guidance to, and actions by, the Councils or Secretary prior to rulemaking. Of particular importance are guidance for Secretarial actions after receipt of an FMP or amendment from the Council, and Secretarial action if a Council fails to submit a

necessary FMP or amendment or fails to adequately revise an FMP or amendment that has been disapproved.

Section 9 also includes several amendments to existing provisions of the Act. Section 304(d) of the Act, Establishment of Fees, is moved to section 305(d) of the amended Act to be consistent with and properly included in the rulemaking provisions of the Act. This provides for greater continuity and will enable the public to more readily understand the authority and requirements of the establishment of fees under the rulemaking authority of the Secretary.

Section 9 would amend section 304(f) (3) (E) of the Act to delete the requirement that fishing vessels of the United States must be provided with a reasonable opportunity to harvest an allocation or quota under a relevant international fishery agreement. The primary management program for highly migratory species should continue to be accomplished through international organizations. However, the current requirement that U.S. fishermen be allowed a fair opportunity to take an internationally established quota may pose a problem if the United States wishes to establish a quota on a local stock or substock of a highly migratory species for conservation purposes that is less than that allowed by the international organization. The inability to set a lower quota could result in local overfishing and the loss of long-term benefits.

Section 9 would add a new section 304(h) to provide the Secretary with the authority to implement uniform recordkeeping and reporting requirements for all fisheries subject to Magnuson Act jurisdiction. Current authority is limited to individual FMP recordkeeping and reporting (section 303(a)), and individual fishery data collection programs in advance of an FMP (section 303(e)).

Lacking the authority for a national data collection program has resulted in a series of independent requirements for each FMP that are not integrated with each other, or with non-FMP fisheries data collection programs sponsored by the National Marine Fisheries Service (NMFS) or state governments. As a consequence, recreational and commercial fishermen and processors are subject to redundant recordkeeping and reporting regulations depending on the number of FMP and other species they handle. Moreover, additional reporting and recordkeeping requirements imposed by non-Magnuson Act authorities makes it more likely that duplication of data collection activities exists. The availability, quality and timeliness of information available to NMFS, the Councils, and fishermen in developing and monitoring FMP's has been compromised.

Granting this authority to the Secretary would provide the ability to integrate independent FMP-specific data collection programs into a comprehensive data collection and management

system. Data on currently managed species as well as potential fisheries subject to management would be collected. This would: (1) provide baseline information about how fishermen actually fish, change fisheries and the amount of effort used during the year, and how regulations in one FMP will affect their overall livelihood and the stocks of fish on which they depend, (2) reduce the need for fishermen and processors to maintain separate logbooks or records for each FMP, (3) allow the implementation of efficient data entry, analysis and dissemination systems within NMFS, and (4) improve the coordination of fisheries data collection between NMFS and data collection programs sponsored by the states and other Federal agencies.

Section 9 would add a new paragraph (2) to section 304(f) of the Act, as amended (formerly section 304(c)), to require the Secretary to take action to prepare an amendment if the Council has not submitted the necessary amendment within the required time as provided for in section 302(h) (2) of the Act, as amended. This provision would ensure that action is taken within a reasonable time period to protect a stock from overfishing. It utilizes the definition of overfishing currently required in each fishery management plan as the triggering mechanism. The required amendment must address the prevention of current or future overfishing and must incorporate provisions to rebuild depleted stocks. Amendment of 50 CFR Part 602 guidelines is anticipated to identify a timeframe for restoration of a stock.

Section 9 would add a new subsection (h) to section 304 of the Act, as amended, to require the Secretary to report annually to the Councils on the status of stocks under their jurisdiction. This report and the underlying analysis would provide the basis for the Councils to prepare an amendment to an FMP, in accordance with section 302(h)(2) as amended, when a stock is approaching a condition of being overfished or is overfished

RULEMAKING

Section 10 would replace section 305 of the Act with necessary provisions that would focus under one section all actions necessary for the preparation, promulgation and implementation of regulations. Provisions regarding emergency regulations, the establishment of fees, the responsibility of the Secretary, and judicial review of the regulations are also addressed. Combining these aspects of rulemaking in one section will provide the public with a clearer understanding of the roles, authorities, and responsibilities of the Councils and Secretary regarding fishery management regulations.

Section 10 also includes several amendments to existing provisions of the Act. Section 10 would amend section 305(d) of the Act (formerly section 304(d)) with provisions for the establishment of fees based on the costs of issuing of permits, the costs of implementing fishery management measures, the value

of fish taken through individual harvest share programs, and the value of all fish upon first sale.

This amendment is consistent with the findings of the National Performance Review that private parties should provide compensation for the use of public fishery resources for commercial purposes, particularly where the Federal government provides general and specific services. This section would also allow the use of fees to reduce harvesting capacity in overfished fisheries through various means, including removal of fishing vessels and permits if the fishery is subject to a limited entry system.

Section 10 would add a new paragraph (B) at section 305(c)(3) of the Act, as amended (formerly section 305(c)(3)), to expand the timeframe for emergency actions to include an additional 270-day period. Approval of the additional 270-day period would be dependent on prior provision for public comment on the emergency and progress by the Council, or Secretary, as appropriate, on the development of an FMP amendment to effect a permanent solution to the problem. Fishery managers have found that 180 days (two 90-day periods) is frequently insufficient time for a Council or the Secretary to implement a permanent solution to a problem through an FMP or amendment. Without relief, a hiatus in necessary regulations may result in adverse effects on the resource or industry. This provision seeks to strike a balance among the

need for quick action to address a problem in the resource or fishery, the need for public participation, and the need for additional time to effect a permanent resolution to the problem without a hiatus in controlling regulations.

Section 10 would also add a new subsection (C) to section 305(c)(3) of the Act, as amended (formerly section 305(c)(3)), to authorize the Secretary to extend indefinitely emergency regulations when necessary to protect the public health. Cases of severe illness or death have been recorded as a result of seafood poisoning in recent years during outbreaks of shellfish toxins. Other health emergencies, such as the accidental sinking of arsenic trioxide cargo off the coast of New Jersey, may also necessitate Federal action. The Magnuson Act does not provide the Secretary with sufficient authority to issue emergency regulations for more than 180 days in the event of a health emergency associated with seafood or its environment.

STATE JURISDICTION

Section 11 would amend section 306(c)(1) to establish a new subsection to require foreign processors operating in the internal waters of a State to report certain vessel and catch information to the Secretary. Detailed information on internal waters processing operations is generally available only to State officials of the approving governor. Federal and other State agencies, as well as other regulatory organizations such as the

Interstate Marine Fisheries Commissions, involved with managing the species need to know the amount of fish harvested, where U.S. fishermen are harvesting the fish, and whether the species are managed under a fishery management plan or found in waters of two or more States. Although some data may be shared among the interested parties, all too often the data provided to the Secretary are inconsistent, incomplete, and not timely. By requiring foreign internal waters processors to provide reports to the Secretary, NMFS will have complete and reliable data for the effective management and scientific understanding of the fishery resources of the United States. Further, by requiring this information, NMFS may assure that the national management and conservation program is utilizing, and is based upon, the best scientific information available.

PROHIBITED ACTS

Section 12(a) would amend section 307(1) (L) of the Act to extend the protection of criminal penalties to persons employed by or under contract to NMFS and involved in collecting fishery information in their official duties. Unlike observers, who were afforded protection under the Fishery Conservation Amendments of 1990, no prohibitions or criminal sanctions explicitly address assaults on statistical agents. Statistical agents, however, are often the primary Federal contact with members of the fishing industry and must often endure the brunt of fishermen's displeasure with regulatory actions taken under the Magnuson Act,

the Endangered Species Act, the Marine Mammal Protection Act, the Lacey Act, or other applicable law.

Section 12(b) addresses two problems that have arisen in enforcing the prohibition against large-scale driftnet fishing. Section 307(1) (M) would be revised to clarify what vessels are subject to U.S. jurisdiction, to include foreign vessels whose nation authorizes the United States to exercise jurisdiction, and stateless vessels. It would also create a rebuttable presumption that a vessel with gear capable of use for large-scale driftnet fishing is engaged in such fishing.

Section 12(c) would amend section 307(2) (A) of the Act to provide an exception whereby foreign vessels would be allowed to transship fish products at sea in the EEZ or within the boundary of any state under a permit issued by the Secretary.

Sections 12(d) and (e) contain conforming changes.

CIVIL PENALTIES AND PERMIT SANCTIONS

Section 13 would amend section 308(b) of the Act to provide for judicial review of permit sanctions. Although the Magnuson Act provides that any person who is assessed a civil penalty may obtain a review of the penalty in U.S. district court, it does not provide explicitly for such review of permit sanctions. The two standards should be treated the same, especially since they

may be imposed together in the same administrative hearing. The draft bill would also delete language in section 308(b) regarding the serving of a copy of a complaint to ensure consistency of service procedures with other district court actions in accordance with the Federal Rules of Civil Procedure.

ENFORCEMENT

Section 14(a) would amend section 311(e) (1) of the Act to allow the Penalty and Forfeiture Fund to be capitalized by receipts from, and to be used for, the enforcement of all statutes dealing with living marine resources. The Magnuson Act does not currently provide for monies from the Penalty and Forfeiture Fund to be used for enforcement-related activities associated with various living marine resource statutes such as the Marine Mammal Protection Act.

Section 14(b) would amend section 311(e) (2) of the Act to provide that any person found in any enforcement proceeding to be in violation of the Act or any other marine resource law shall be liable for the costs of the sale, storage, care, or maintenance of fish or property seized as a result of the violation. This section makes three changes to existing law by: (1) expanding the scope of the provision to include all enforcement proceedings instead of civil penalties; (2) listing explicitly that sales costs are an expense for which violators are liable; and

(3) clarifying that liability extends to enforcement of all marine resource laws.

OBSERVERS WAGES AS MARITIME LIENS

Section 15 would provide observers under the draft bill with the same lien priority for past-due wages as is currently provided for seamen's liens under admiralty and general maritime law.

CONFORMING AMENDMENTS

Section 16 would make technical amendments to correct references to sections that are redesignated in the draft bill.

AUTHORIZATION OF APPROPRIATIONS

Section 17 would amend section 406 of the Act to authorize appropriations for carrying out the Act at a level of \$103,218,000 for fiscal year 1994, \$142,502,000 for fiscal year 1995, and "such sums as may be necessary" for fiscal year 1996.

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

SIDE-BY-SIDE COMPARISON

[New provisions are in boldface type.]

CURRENT STATUTENOAA PROPOSALSection 22(a)2(a)

Findings

References to habitat added in (2) and (6) and in new paragraphs (9) and (10)2(b)2(b)

Purposes

New paragraph (7) added to promote the advocacy of habitat protectionSection 3

Definitions

New term added: (6) "essential fish habitat"; (22) "optimum yield" revised to include rebuilding of depleted stocks to MSY levelsSection 201201(a)(1)201(a)(1)

Foreign fishing authorized

Approval for transshipments added201(f)

Foreign allocation report

DeletedSection 204204(b)(1)204(b)(1)

Eligibility for permit

Exception to GIFA requirement for permit to transship

204(b)(4)

Transmittal of application

204(b)(4)

Application for transshipment permit

204(b)(5)

Action by Council

204(b)(5)

Same, but includes transshipment provision

204(b)(6)

Approval

204(b)(6)

Secretarial approval of permit applications for transshipment

204(b)(8)

Notice of approval

204(b)(8)

Same, but includes transshipment provision

204(b)(9)

Disapproval of applications

204(b)(9)

Secretary must notify vessel owner, who can resubmit revised application for transshipment

204(b)(11)

Issuance of permits

204(b)(11)

Issuance of permit for transshipment

Section 206206(e)

Annual driftnet report

206(e)

Deleted

Section 301301(a)(1)

National Standard 1 - Prevent overfishing

301(a)(1)

Requirement to rebuild depleted stocks added

301(a)(8)

National Standard 8 - Minimise incidental catch that results in unnecessary waste

Section 302302(a)(6)

Pacific Council

302(a)(6)

Seat for treaty Indians added

302(b)(5)

Secretary to appoint one
treaty Indian representative
designated by Secretary of
Interior to Pacific Council
for one term only

302(h)

Functions of Council

302(h)(2)

Council must prepare FMP or
amendment or proposed
regulations within 1 year of
notification that stock is
overfished ✓

302(i)

Fishery habitat concerns

302(i)

Councils must submit annually
a list of all essential fish
habitats ✓

302(j)

Procedural matters

302(j)

Federal Advisory Committee Act
shall not apply to HMS
advisory panels/committees

302(k)Disclosure of financial
interest302(k)

Council member may not
participate in decision if it
would significantly affect
his/her financial interest,
unless RD or AA grants
authorization.

Section 303303(a)(1)Conservation and management
measures in FMP303(c)(1)Conservation and management
measures in rules303(a)(2)

Description of fishery in FMP

303(a)(1)

Same

303(a)(3)

MSY and OY in FMP

303(a)(4)

DAH and DAP in FMP

303(a)(5)

Data to be submitted in FMP

303(a)(6)

Weather adjustments in FMP

303(a)(7)

Habitat information in FMP

303(a)(8)

Scientific data in FMP

303(a)(9)

Fishery impact statement in FMP

303(a)(5)

Same

303(a)(6)Same, except process instead
of specification303(c)(2)

Data to be submitted in rules

303(c)(3)

Weather adjustments in rules

303(a)(2)Environmental and habitat
information in FMP303(a)(7)

Same

305(a)(1)(A)Fishery impact statement
accompanying rules303(a)(3)Problems, objectives,
and alternate approaches303(a)(4)

Definition of overfishing ✓

303(a)(8)Identification of essential
fish habitats in FMP ✓303(b)

Transition to new FMP format

303(b)(1)

Permits in FMP

303(c)(4)Permits in rules; see 305(d)
for permit fees

303(b)(2)

Zones and periods for fishing
in FMP

303(b)(3)

Catch limits in FMP

303(b)(4)

Gear and vessel limits in FMP

303(b)(5)

Incorporation of State measures
in FMP

303(b)(6)

Limited entry in FMP

303(b)(7)

Data from processors in FMP

303(b)(8)

Observers in FMP

303(b)(9)

Effect on anadromous stocks
in FMP

303(b)(10)

Necessary and appropriate
measures in FMP

303(c)

Proposed rules to be submitted
with FMP

303(d)

Confidentiality of statistics

303(c)(5)

Zones and periods for fishing
in rules

303(c)(6)

Catch limits in rules

303(c)(7)

Gear and vessel limits in
rules

303(c)(8)

Incorporation of State
measures in rules

303(c)(9)(A)

Limited entry in rules

303(b)(10)

Processor data (including
economic data) in rules

303(b)(11)

Observers in rules

303(a)(2)

Same

303(b)(12)

Necessary and appropriate
measures in rules

305(a)

Proposed rules to be submitted
by Council and promulgated by
Secretary (see below)

303(d)

Same, except 3-year limit on
confidentiality

303(e)

Data collection programs

304(a)

(1) Same; (2) Adds nation-wide mandatory data collection program to cover all species and eliminate duplication

303(f)

Restriction on use of data

(303(e))

Same .

Section 304304(a)(1)

Secretarial receipt of FMP; preliminary evaluation; notice of availability; proposed rules by day 15

304(d)

No preliminary evaluation of FMP; 45-day comment period on FMP; see 305(a) on proposed rules

304(a)(2)

Consultations during review

304(e)(1)

Same

304(a)(3)

Receipt date

Eliminated

304(b)(1)

Approval/disapproval by day 95; resubmission of FMP; "fast track" review

304(e)(2)

Approval/disapproval 30 days after end of comment period; no "automatic" approval

304(b)(2)

Notice to Council of disapproval

304(e)(2)

Same

304(b)(3)

Resubmission of FMP; "fast track" review

304(e)(3)

Resubmission on same schedule

304(c)(1)

Preparation of FMP by Secretary

304(f)(1)

Same

304(c)(2)

Review of Secretarial FMP

304(f)(3)

Same; see 305(a) on proposed rules

304(c)(3)

Council approval for limited entry in Secretarial FMP

304(d)

Permit fees limited to cost

303(b)(9)(B)

Same for limited entry rules

305(d)(1)

Permit fees to offset certain costs of conservation and management, where participants will receive direct benefits

305(d)(2)

Fee up to 3 percent on value of fish taken under individual harvest shares f

305(d)(3)

Fee up to 1 percent on value of fish at first sale in U.S. f

305(e)(1)

Marine Fishery Conservation Fund from fees under (d)

305(e)(2)

Uses of Fund for conservation and management

305(e)(3)

Use of Fund for buy-out program in overcapitalized, limited-entry fishery

304(e)

Strategic plan for research

304(f)(1)

Fisheries under authority of more than one Council; lead or joint designation

304(f)(2)

Boundaries between Councils

304(b)

Same

304(g)(1)

Same

304(g)(2)

Same

304(f)(3)

Management of highly migratory
species by Secretary

304(g)(3)

Same, except deletes language
fair opportunity to harvest
quota set by international
agreement

304(g)

Incidental harvest research

304(c)

Same

304(h)

Atlantic scallop FMP

Eliminated

304(f)(2)

Secretarial FMP or proposed
regulations required if
Council fails to submit within
1 year after determination
that stock is overfished ✓

304(b)

Annual report to Councils on
status of stocks (overfishing) ✓

Section 305305(a)(1)

Proposed rules, consistent
with FMP, submitted by Council
and promulgated by Secretary;
preliminary evaluation

305(a)(2)

Proposed rules, consistent
with Secretarial FMP,
promulgated by Secretary

305(a)(3)

45-day comment period (shorter
for minor revisions) on
proposed rules

305(a)

Final rules by day 110

305(b)

Judicial review

305(c)

Emergency actions

305(d)Responsibility of Secretary
(promulgation of rules)305(e)Effect of certain laws of
time requirements305(b)Final rules within 45 days of
end of comment period; must
explain any substantive
differences from proposed
rules305(h)

Same

305(c)Extension of emergency rules
to 360 days or duration of
public-health emergency305(f)

Same

305(g)

Same

Section 306306(c)(1)Requirements for foreign
vessels to process fish
in internal waters306(c)(1)Requirement to report
catch data to SecretarySection 307307(1)(L)

Prohibits assaults on observers

307(1)(M)Prohibits large-scale driftnet
fishing307(1)(L)Data collectors added to those
protected by threat of
criminal penalties307(1)(M)Vessels under U.S.
jurisdiction expanded;
rebuttable presumption of
fishing if gear on board

307(2)(A)

Prohibits foreign fishing within
State waters

307(2)(A)

Exception for transshipment

Section 308308(b)

Judicial review of civil
penalties

308(b)

Judicial review of permit
sanctions

308(g)(1)

Conditions for permit sanction

308(g)(1)

Clarified to include amounts
due in settlement of civil
forfeitures

Section 311311(e)(1)

Penalty and Forfeiture Fund

311(e)(1)

Sources and uses expanded

311(e)(2)

Liability for storage and
maintenance costs

311(e)(2)

Scope expanded

Section 312

Observers' wages considered
maritime liens

FEDERAL, STATE, AND LOCAL FEES AND TAXES ON COMMERCIAL FISHING -- GULF OF MEXICO COAST¹

	TEXAS	LOUISIANA	MISSISSIPPI	ALABAMA	FLORIDA	FEDERAL FEES
Bluefin tuna	Annual permit application fee is \$20 (50 CFR 285.21(k))					
Sharks	Annual permit application fee (authorized by 50 CFR 678.4(d)) is \$53 for 1993					
Swordfish	Annual vessel permit fee (authorized by 50 CFR 630.4(d)) is \$53 for 1993					
Octocoral	Annual permit application fee is \$28 (50 CFR 938.4(d))					
Coastal migratory pelagics	Annual permit application fee (authorized by 50 CFR 642.4(d)) is \$53 for 1993					
Reef fish	Annual permit application fee (authorized by 50 CFR 641.4(d)) is \$53 for 1993					
Spiny lobster	Annual permit application fee is \$53 (50 CFR 640.4(d))					
All fisheries, as required	A Marine Mammal Incidental Take Permit for Category I and II fisheries (identified in 58 FR 32905, 6/14/93) is \$30 per calendar year (50 CFR 229.5(b))					
Menhaden ²	Annual vessel license fee is \$3,500	Annual purse seine license fee is \$505 per seine (resident) and \$2020 (non-resident)	Annual vessel and net license fee is \$150 (resident only)	Annual purse seine license fee is \$500 (resident only)		STATE FEES
			Annual processor license fee is \$500 (resident only)			

¹ Excludes fees and taxes specific to aquaculture.

² Blank entry boxes indicate that State charges for commercially harvesting certain groups of species are not separately identified; in these instances, consult the later section "All fisheries" for any applicable State fees and taxes.

	TEXAS	LOUISIANA	MISSISSIPPI	ALABAMA	FLORIDA
Shrimp			Annual license fee for vessels less than 30 ft is \$50 (resident) and \$100 (non-resident); for vessels from 30 to 45 ft, annual license fee is \$75 (resident) and \$150 (non-resident); and for vessels exceeding 45 ft, annual license fee is \$100 (resident) and \$200 (non-resident)	Annual license fee for vessels less than 30 ft is \$50 (resident only); for vessels from 30 to 45 ft, annual license fee is \$75; for vessels exceeding 45 ft, annual license fee is \$100	
		Annual shrimp trawl license fee is \$25 per trawl (resident) and \$100 per trawl (non-resident); non-resident fee is \$50 per trawl for 16-ft trawls			
Crab			Annual harvester license fee is \$75 (resident) and \$200 (non-resident)	Annual harvester license fee is \$50 (resident only)	

CRS-3

	TEXAS	LOUISIANA	MISSISSIPPI	ALABAMA	FLORIDA
		Annual license fee for any legal number of crab traps is \$25 plus \$1 per trap on trotline (resident) and \$100 plus \$4 per trap on trotline (non-resident)			
Live-bait			Annual harvester license fee is \$100 (resident only)		
			Annual dealer license fee is \$50 (resident only)	Annual live bait shrimp license fee is \$50 (resident only)	
Mullet		Annual harvester permit fee is \$100 (resident) and \$400 (non-resident)			
Oysters	Annual harvester license fee is \$100 (resident) and \$250 (non-resident)	Annual harvester license fee is \$100 (resident) and \$400 (non-resident)	Annual tonging license fee is \$50 (resident only); annual dredging license fee is \$100 (resident) and \$200 (non-resident)	Annual harvesting license fee is \$25 (resident only)	Annual Apalachicola Bay harvesting license fee is \$71 (resident) and \$355 (non-resident)

CRS-4

	TEXAS	LOUISIANA	MISSISSIPPI	ALABAMA	FLORIDA
	Annual vessel permit is \$350 (resident) and \$1,400 (non-resident)				
		Annual per long license fee is \$30 (resident) and \$240 (non-resident); annual per dredge license fee is \$25 (resident) and \$200 (non-resident)			
					Annual license fee for oyster or clam cannery is \$50

CRS-5

	TEXAS	LOUISIANA	MISSISSIPPI	ALABAMA	FLORIDA
All fisheries	Annual commercial harvester license fees range from \$20 to \$75 (resident) and \$150 (non-resident)	Annual commercial harvester license fee is \$65 (resident) and \$400 (non-resident)		Annual resident commercial license ranges from \$25 to \$600 (resident); non-resident charged same fee as Alabama resident pay in their State, but not less than twice the cost of same license to Alabama resident	Annual saltwater products individual license fee is \$50 (resident), \$200 (non-resident), and \$300 (alien)
	Annual vessel license fees range from \$15 to \$150 (resident) and from \$60 to \$320 (non-resident)	Annual vessel license fee is \$15 (resident) and \$60 (non-resident)	Annual vessel license fee is \$100 (resident) and \$300 (non-resident); captain's license is \$10		Annual saltwater products vessel license fee is \$100 (resident), \$400 (non-resident), and \$600 (alien); annual vessel registration fee is based on vessel length

CRS-6

	TEXAS	LOUISIANA	MISSISSIPPI	ALABAMA	FLORIDA
		Annual gear license fee is \$25 (resident) and \$100 (non-resident); except saltwater gill nets, for which license fee is \$250 (resident) and \$1,000 (non-resident)	Annual gear license fees: gill and trammel net license fee is \$100 (resident) and \$300 (non-resident); commercial hook and line license fee is \$109 (resident) and \$400 (non-resident)	Annual gear license fees: no more than 1200 ft of gill, trammel or seine net -- license fee is \$100 (resident) and \$500 (non-resident); from 1201 to 2400 ft of gill, trammel or seine net -- license fee is \$150 (resident) and \$750 (non-resident); commercial hook and line license fee is \$25 (resident only)	Annual gear license fees: purse seine license fee is \$25; county gill net license fee is \$300

CRS-7

	TEXAS	LOUISIANA	MISSISSIPPI	ALABAMA	FLORIDA	
		Annual wholesale/retail restaurant/grocery license fee is \$30 (resident); wholesale/retail business license fee is \$105 (resident) and \$405 (non-resident); wholesale/retail vehicle license fee is \$105 (resident) and \$405 (non-resident); transport license fee is \$30	Annual seafood dealer license fee is \$100; annual seafood processor license fee is \$200; annual transport permit fee is \$100; annual interstate commerce license fee is \$20	Annual seafood dealer license fee is \$125 per outlet (resident); non-resident charged same fee as Alabama resident; pay in their State, but not less than twice the cost of same license to Alabama resident	Annual county wholesale seafood dealer license fee is \$300 (resident), \$500 (non-resident), and \$1,000 (alien); annual statewide wholesale seafood dealer license fee is \$450 (resident), \$1,000 (non-resident), and \$1,500 (alien); annual retail seafood dealer license fee is \$25 (resident), \$200 (non-resident), and \$250 (alien)	
						LOCAL FEES

FEDERAL, STATE, AND LOCAL FEES AND TAXES ON COMMERCIAL FISHING -- S. ATLANTIC COAST¹

	NORTH CAROLINA	SOUTH CAROLINA	GEORGIA	FLORIDA	FEDERAL FEES
Bluefin tuna	Annual harvest permit application fee is \$20 (50 CFR 286.21(k))				
Sharks	Annual harvest permit application fee (authorized by 50 CFR 678.4(d)) is \$53 for 1993				
Swordfish	Annual harvesting vessel permit fee (authorized by 50 CFR 630.4(d)) is \$53 for 1993; annual application fee for a dealer permit is \$53				
Octocoral	Annual harvest permit application fee is \$28 (50 CFR 638.4(d))				
Coastal migratory pelagics	Annual harvest permit application fee (authorized by 50 CFR 642.4(d)) is \$53 for 1993				
Reef fish	Annual harvest permit application fee (authorized by 50 CFR 641.4(d)) is \$53 for 1993				
Spiny lobster	Annual harvest permit application fee is \$53 (50 CFR 640.4(d))				
Snapper-Grouper	Annual harvest permit application fee (authorized by 50 CFR 646.4(e)) is \$53 for 1993				
Wreckfish	Annual harvest permit application fee (authorized by 50 CFR 646.4(e)) is \$53 for 1993; in addition, a fee of \$34 is charged to record a transfer of shares and issue new share certificates; annual application fee for a dealer permit is \$53.				
All fisheries, as required	A Marine Mammal Incidental Take Permit for Category I and II fisheries (identified in 58 FR 32905, 6/14/93) is \$30 per calendar year (50 CFR 229.5(b))				
Crab ²		Annual peeler crab license is \$75			STATE FEES
	Annual license fee for crab processor is \$100; for unprocessed crab dealer, annual license fee is \$50 (G.S. 113-156(e))				

¹ Excludes fees and taxes specific to aquaculture.

² Blank entry boxes indicate that State charges for commercially harvesting certain groups of species are not separately identified; in these instances, consult the later section "All fisheries" for any applicable State fees and taxes.

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	NORTH CAROLINA	SOUTH CAROLINA	GEORGIA	FLORIDA
Shellfish	Annual oyster, scallop and clam license fee is \$4 (resident only) (G.S. 113-154(c))	Annual shellfish license is \$25.50 ³		
	Annual dealer license fees: oyster, scallop, or clam shucker-packer fee is \$100; oyster, scallop, or clam shell stocker shipper is \$50 (G.S. 113-156(e))			
				Annual license fee for oyster or clam cannery is \$50
Menhaden	Annual vessel license for mothership is \$2 per ton (G.S. 113-152(d))			
	Annual license fee for operating a menhaden processing plant is \$100 (G.S. 113-186(e))			
Shrimp	Annual license fee for shrimp processor is \$100; for unprocessed shrimp dealer, annual fee is \$50			

³ However, no shellfish licenses are issued to residents of North Carolina, Virginia, Maryland, or New York.

	NORTH CAROLINA	SOUTH CAROLINA	GEORGIA	FLORIDA
All fisheries		Annual license fee to land and sell fish and shellfish is \$25 ⁴	Annual license fee is \$12 (resident) and \$118 (non-resident)	Annual saltwater products individual license fee is \$50 (resident), \$200 (non-resident), and \$300 (alien)
	Annual vessel license fees: for vessels 18 ft. or less, fee is \$1 per ft.; vessels between 18 and 38 ft. fee is \$1.50 per ft.; and vessels exceeding 38 ft. fee is \$3 per ft. (resident); non-resident annual vessel license fee is the greater of \$200 or the amount equal to the non-resident fee charged by non-resident's State (G.S. 113-152(c))	Annual trawler license fee is \$75 (resident) and \$300 (non-resident ⁵); annual license for power boats 18 ft. or less is \$20 ⁶ ; annual license for power boats exceeding 18 ft. is \$25 ⁵ ; annual Captain's license fee is \$20 ⁷	Annual trawler license fee is \$50 plus \$3 for each foot beyond 18 ft (resident) and same plus \$25 (non-resident); annual non-trawler fee is \$5 plus \$0.50 for each foot beyond 18 ft (resident) and same plus \$25 (non-resident)	Annual saltwater products vessel license fee is \$100 (resident), \$400 (non-resident), and \$600 (alien); annual vessel registration fee is based on vessel length

⁴ Except Georgia and Florida residents, for which a different fee applies due to South Carolina's reciprocal licensing law.

⁵ Except North Carolina residents, for which a different fee structure applies due to South Carolina's reciprocal licensing law.

⁶ Except North Carolina and Georgia residents, for which a different fee applies due to South Carolina's reciprocal licensing law.

⁷ Except Georgia and Florida residents, for which a different fee applies due to South Carolina's reciprocal licensing law.

CRS-4

NORTH CAROLINA	SOUTH CAROLINA	GEORGIA	FLORIDA
Annual gear or equipment license fees range from \$25 to \$600 (G.S. 113-152(g))	Annual gear license fees: each gill net, shad net, seine, or miscellaneous net is \$10 (resident) and \$10 per 100 ft (non-resident); license for crab pots, miscellaneous pots or traps, long, rakes, forks, dredges, or trotline is \$10; license for gigging in Jasper, Beaufort, and Colleton Counties is \$1.10 (resident) and \$25.25 (non-resident); channel net license is \$250		Annual gear license fees: purse seine license fee is \$25; Nassau County gill net license fee is \$250; St. John's County beach seine license fee is \$250

	NORTH CAROLINA	SOUTH CAROLINA	GEORGIA	FLORIDA	
	Annual finfish processor license fee is \$100; for unprocessed finfish dealer, annual license fee is \$60; annual license fee for operating a fish-dehydrating or oil-extracting plant for other than menhaden is \$50	Annual wholesale seafood dealer license fee is \$50 ⁸	Annual wholesale fish dealer license fee is \$59; annual retail fish dealer license fee is \$10	Annual county wholesale seafood dealer license fee is \$300 (resident), \$500 (non-resident), and \$1,000 (alien); annual statewide wholesale seafood dealer license fee is \$450 (resident), \$1,000 (non-resident, and \$1,500 (alien); annual retail seafood dealer license fee is \$25 (resident), \$200 (non-resident), and \$250 (alien)	LOCAL FEES

8 Except Florida residents, for which a different fee applies due to South Carolina's reciprocal licensing law.

FEDERAL, STATE, AND LOCAL FEES AND TAXES ON COMMERCIAL FISHING -- MID-ATLANTIC COAST¹

	NEW YORK	NEW JERSEY	MARYLAND	DELAWARE	VIRGINIA	
Bluefin tuna	Annual permit application fee is \$20 (50 CFR 285.21(k))					FEDERAL
Sharks	Annual permit application fee (authorized by 50 CFR 678.4(d)) is \$53 for 1993					FEES
Swordfish	Annual vessel permit fee (authorized by 50 CFR 680.4(d)) is \$53 for 1993					
All fisheries, as required	A Marine Mammal Incidental Take Permit for Category I and II fisheries (identified in 58 FR 32905, 6/14/93) is \$30 per calendar year (50 CFR 228.5(b))					
Crabs ²	Annual blue claw crab permit fee is \$15 (resident) and \$25 non-resident (E.C.L. #13-0331)		Annual limited harvester (50 or fewer crab pots, trotlines, nets, dip nets, traps, pounds, and scrapes) license fee is \$50; for more than 50 crab pots, license fee is \$150; unlimited harvester license fee is \$175	Annual horseshoe crab collectors or dredgers license fee is \$100 (resident) and \$1,000 (non-resident) (\$2704, 7 Del.C.)	STATE FEES	

¹ Excludes fees and taxes specific to aquaculture.

² Blank entry boxes indicate that State charges for commercially harvesting certain groups of species are not separately identified; in these instances, consult the later section "All fisheries" for any applicable State fees and taxes.

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NEW YORK	NEW JERSEY	MARYLAND	DELAWARE	VIRGINIA
	Annual crab pot license fee is \$100; annual crab dredge license fee ranges from \$15 to \$250, based on vessel size		Annual crab dredgers license fee is \$57.50 (resident) and \$575 (non-resident); annual crab pot license fees: 50 pots - \$28.75 (resident) and \$287.50 (non-resident), 100 pots - \$57.50 (resident) and \$575 (non-resident), 150 pots - \$86.25 (resident) and \$862.50 (non-resident), and 200 pots - \$115 (resident) and \$1,150 (non-resident) (\$52303, 2307, 7 Del.C.).	Annual crab pot license fee is \$29 (individual) and \$48 (with assistant); annual ordinary trotline license fee is \$8; annual patent trotline license fee is \$31; annual crab power dredge license fee is \$58; annual handcrape license fee is \$16 (single) and \$32 (double); annual crab dip net license fee is \$8; annual crab trap or pound license fee is \$5 (C.V. 28 2-702)

CRS-3

	NEW YORK	NEW JERSEY	MARYLAND	DELAWARE	VIRGINIA
Shellfish	Annual shellfish digger's permit fee is \$35 (E.C.L. §13-0311)	Annual clam license fee is \$50; annual surf clam license fee is \$600	Annual oyster and hardshell clam harvester (diving, tonging, or handcrabbing) license fee is \$50; annual hydraulic dredge license fee for harvesting clams is \$100; annual oyster power dredge license fee (for Somerset County only) is \$50; annual hardshell clam rake license fee is \$30; annual surf clam and ocean quahog harvester license fee is \$50; annual unlimited shellfish harvester license fee is \$200	Annual oyster harvester license fee is \$50 (resident) and \$500 (non-resident); annual clam dredge or tong/rake license fee is \$57.50 (resident) and \$575 (non-resident) (\$2107, 7 Del.C.)	Annual scallop harvester license fee is \$50 (C.V. 28.1-163); annual license fees for: ordinary clam harvester by hand rake - \$15; patent clam harvester with tong - \$35; clam hand dredge - \$15; clam power dredge - \$35; oysters by hand - \$10; oyster patent tong - \$35; oyster dredge on public grounds - \$50; and oysters by hand tong - \$10 (C.V. 28.2-502)
	Annual surf clam vessel license fee is \$500 (non-resident only), subject to reciprocity requirements (E.C.L. §13-032X4)(c))	Annual oyster dredge boat license is \$4 per ton	Annual oyster dredge boat license fee is \$250 (fee is \$15 for dredge boat to take oysters from leased ground in Wicomico County)		

NEW YORK	NEW JERSEY	MARYLAND	DELAWARE	VIRGINIA
		Annual oyster harvesting surcharge is \$300		
Annual shellfish shipper's and processor's permit fee ranges from \$7 to \$250, depending on the class license and privileges (E.C.L. §13-0315)	Annual oyster dealer license fee is \$100; annual shucking house license fee is \$100			Annual shucking house license fees: \$7.50 (under 1,000 gals), \$20 (1,001 to 10,000 gals), \$45 (10,001 to 25,000 gals), \$75 (25,001 to 50,000 gals), \$125 (50,001 to 100,000 gals), \$175 (100,001 to 200,000 gals), and \$275 (exceeding 200,000 gals) (C.V. 28.2-504)
	Annual surf clam landing fee is \$0.15 per bushel			
		Severance tax for oysters is \$1 per bushel; severance tax for softshell clams is \$0.50 per bushel		
		Oyster export tax is \$0.30 per bushel		

CRS-5

	NEW YORK	NEW JERSEY	MARYLAND	DELAWARE	VIRGINIA
Menhaden	Annual purse seine vessel license fee is \$25 (30 gross tons or less), \$200 (more than 30 tons but less than 100 tons), \$500 (more than 100 tons but less than 150 tons), \$750 (more than 150 tons but less than 200 tons), and \$1,000 (more than 200 gross tons) (E.C.L. §13-0333)	Annual purse seine vessel license fee ranges from \$20 to \$900, based on vessel size (resident) and from \$450 to \$1,500, based on vessel size (non-resident)			Annual license fee for sail vessels is \$21.50 (net 400 mesh deep or less) and \$75 (net more than 400 mesh deep); annual license fee for power boats is \$37.50 (less than 20 hp), \$3 per ton, \$150 maximum (less than 70 tons), and \$5 per ton, \$800 maximum (more than 70 tons) (C.V. 28.2-402)
Conch and Terrapin			Annual harvester license fee is \$20		Annual conch license fee is \$35 (C.V. 28.1-23)

CRS-6

	NEW YORK	NEW JERSEY	MARYLAND	DELAWARE	VIRGINIA
Lobster	Annual harvester permit fee is \$60 (resident) and \$160 (non-resident); annual non-resident landing permit is \$150 (E.C.L. \$13-0329)			Annual lobster pot license is \$57.50 (resident) and \$575 (non-resident) (§2504, 7 Del.C.)	
Eel				Annual harvester license is \$115 (resident) and \$1,150 (non-resident) (§1802, 7 Del.C.)	Annual eel pot license fee is \$12 (individual) and \$20 (with assistant) (C.V. 28.2-301)
All fisheries	Annual marine food fish license fee is \$100 (resident) and \$1,000 (non-resident) (E.C.L. \$13-0335)		Annual unlimited tidal fish harvester license fee is \$300 (resident only)	Annual marine food fishing license fee is \$150 (resident) and \$1,500 (non-resident) (§914, 7 Del.C.)	

CRS-7

NEW YORK	NEW JERSEY	MARYLAND	DELAWARE	VIRGINIA
Annual non-resident food fish landing license fee is \$250 (E.C.L. §13-0335)		Annual seafood dealers license fee is \$150		Annual license fee for seafood buyers is \$25 (boat or truck) and \$50 (place of business) (C. V. 28.2-228)
		Annual seafood marketing surcharge is \$10		

NEW YORK	NEW JERSEY	MARYLAND	DELAWARE	VIRGINIA
	Annual license fees for: drift gillnets - \$20 per net, staked and anchored gillnets - \$3 per net, Hudson River shad net - \$60 per net, bait net - \$10 per license, fyke net - \$12 per net, miniature fyke nets or pots - \$100 per license, parallel nets - \$10 per net, pound nets - \$100 per net, wire pound nets - \$25 per net, haul seine - \$25 per net, shrimp trawl - \$12 per net, purse seine/other trawl - \$100 per license, and lobster or fish pots - \$100 per license³	Annual limited bay net (not more than 200 yds) license fee is \$75; annual bay pots and fyke net license fee is \$37.50; annual commercial hook and line license fee is \$37.50; annual limited ocean net (not more than 200 yds) license fee is \$100; annual unlimited net license fee is \$187.50	Annual permit fees: haul seine - \$25 (resident) and \$250 (non-resident), bag or hoop net - \$10 (resident) and \$100 (non-resident), fyke net - \$5 (resident) and \$50 (non-resident), fish pot - \$1 (resident) and \$10 (non-resident), gillnet - \$5 per 100 yds (resident) and \$50 per 100 yds (non-resident) (\$915, 7 Del.C.)	Annual license fees: pound net - \$25, stake gillnet - \$15, anchor gillnet - \$10 (600 ft or less) and \$15 (601 to 1,200 ft), drift gillnet - \$10 (600 ft or less) and \$15 (601 to 1,200 ft), cast or throw net - \$8, fyke or weir net - \$8, fish pots - \$12 (individual) and \$20 (with assistant), trotline - \$12, dip net - \$6, haul seine - \$29 (less than 500 yds) and \$88 (more than 500 yds), and commercial hook and line - \$25 (C.V. 28.2)

3 Non-resident license fees for the listed gears are the same as resident fees if a New Jersey resident can obtain a license to fish for similar species with similar gear in the non-resident's State for the same fee as a resident of that State. Otherwise, the non-resident license fee is 10 times the resident license fee.

CRS-9

	NEW YORK	NEW JERSEY	MARYLAND	DELAWARE	VIRGINIA	
			Annual non-resident surcharge is the difference between the fee charged a Maryland resident and another State's resident for similar activities with a minimum charge of \$350			
						LOCAL FEES

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA	FEDERAL FEES
Groundfish		Community Development Quotas - 7.5% of pollock in Bering Sea/Aleutian Islands only (50 CFR 675.27)	Limited Access Program begins 1/1/94 (50 CFR 663.30)			
		Observer contracts cost \$6,000 to \$8,000 per month Bering Sea/Aleutian Islands (50 CFR 675.25) and Gulf of Alaska (50 CFR 672.27)				
All fisheries, including groundfish	Marine Mammal Incidental Take Permits for Category I and II fisheries identified in 58 FR 32905, 6/14/93) costing \$30 per calendar year (50 CFR 229.6(b))					
Salmon ²		Salmon marketing tax of 1% of value sold or exported paid by harvester (AS 43.76.110)			Salmon marketing tax of \$0.05 per pound (CA Agricultural Code)	STATE FEES

¹ Excludes fees and taxes specific to aquaculture.

² Blank entry boxes indicate that State charges for commercially harvesting certain groups of species are not separately identified; in these instances, consult the later section "All fisheries ..." for any applicable State fees and taxes.

CRS-2

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
		Salmon enhancement tax of 3% (southeast Alaska) or 2% (other areas, except Dutch Harbor northward where no tax is paid) of value sold or exported paid by harvester (AS 43.78.010-011)	Annual \$100 surcharge on all commercial salmon gear licenses for regional fisheries enhancement (RCW 75.50)		
		As of 1/1/94, landing tax of 3.3% value of processed fish landed within the State paid by processors (AS 43.77)		Catch fee of 3.15% on all salmon and steelhead trout (ORS 508.505(1)(a)); An additional \$0.05 per pound is to be paid through 12/31/97	Landing tax, based on salmon round weight, of \$0.05 per pound (CA Fish and Game Code 8051)

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
		Fisheries business tax of 5% (floating processor), 3% (fixed processor), or 4.5% (cannery) of value (AS 43.75.015(a))	Excise tax on enhanced food fish of 6.35% (chinook and coho salmon and anadromous game fish) and 3.21% (pink and sockeye salmon) caught from the Canada-Alaska border south to the OR-CA border, plus all troll-caught chinook salmon taken from Cape Suckling, Alaska southeastward to the Canada-Alaska border (82.27.020 RCW); Harvester may pay half this tax		
		Annual limited entry permit renewal fees range from \$50 to \$250 for residents, and from \$150 to \$750 for non-resident (20 AAC 05.240(a)(4)); initial application fee for limited entry permits is \$100 (20 AAC 06.250(a))	Entry moratorium in effect for salmon	Annual restricted fisheries permits of \$75 required for ocean troll salmon and Columbia River gillnet salmon	Annual limited entry and restrictive permit costs \$30

CIRS-4

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
Halibut		Fisheries business tax of 6% (floating processor) or 3% (fixed processor) of value (AS 43.76.016(a))	Excise tax on enhanced food fish of 2.14% for halibut taken offshore of Washington State only (82.27.020 RCW); Harvester may pay half this tax		
		As of 1/1/84, landing tax of 3.3% value of processed fish landed within the State paid by processors (AS 43.77)		Catch fee of 1.09% (ORS 608.606(1)(b))	Landing tax, based on round weight, of \$0.0125 per pound
Oysters		Fisheries business tax of 3% (floating processor) or 1% (fixed processor) of value for developing fisheries (i.e., other than salmon, halibut, and crab) (AS 43.76.015(b))	Excise tax 0.07% (82.27.020 RCW); Harvester may pay half this tax		
Baitfish	Annual harvest license fee is \$1				

CRS-6

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
Crab		Fisheries business tax of 6% (floating processor) or 3% (fixed processor) of value (AS 43 76 016a)	Excise tax on unfilleted fixed fish of 2.14% for crab harvested offshore of Washington State only (92 27 020 RCW). Harvester may pay half this tax		
		As of 1/1/94, landing tax of 3.3% value of processed fish landed within the State paid by processors (AS 43 77)		Catch tax of 1.00% (ORE 606 600(D6b))	Landing tax, based on retail weight, of \$0.0010 per pound

CRS-6

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
All fisheries, including salmon, halibut, oysters, and crab		Annual limited entry permit renewal fee range from \$50 to \$250 for residents, and from \$150 to \$750 for non-residents (20 AAC 05.240(a)); initial application fee for entry permit is \$100 (20 AAC 05.250(a)); limited entry is in effect for Southeast Alaska king and tanner crab, and Prince William Sound Dungeness crab; moratorium is in effect for Southeast Alaska Dungeness crab	Entry moratorium in effect for Puget Sound Dungeness crab		Annual limited entry and restrictive permits -- \$75 for Dungeness crab
		Annual \$20 vessel license fee		Annual vessel license fee is \$200 (resident) and \$400 (non-resident)	Commercial boat registration fee \$200 (resident) and \$400 (non-resident)

HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
Annual commercial fishing license fee is \$25 (resident) and \$50 (non-resident); annual harvest permit fee for Northwest Hawaiian Islands is \$1		Annual gear license fees are \$65-\$554 (resident) and \$111-\$1008 (non-resident)	Annual commercial fishing license fees are \$50 (resident), \$100 (non-resident), and \$25 (resident, 18 years of age or younger)	Annual commercial fishing license fees are \$90 (resident) and \$160 (non-resident)
Annual import product license fee is \$2.50; for crustaceans (lobster and crab) - annual wholesale dealer permit fee is \$5, retail dealer permit fee is \$2.50, hotel/restaurant fee is \$1	Annual \$25 processor license fee (AS 43.75.011)		Annual license fees for wholesale fish dealer, food fish canner, or shellfish canner (\$350)	Annual license fee for fish processor or fish receiver is \$400 (CA Fish and Game Code 8033 and 8034); for fish wholesaler \$270 (CA Fish and Game Code 836)
		Annual personal property tax on commercial fishing vessels at rate of \$3.50 per thousand dollars assessed value		
	Annual crew member license fee is \$30 for residents and \$90 for non-residents			

CRS-8

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
		Seafood marketing assessment of 0.3% value of product sold or exported paid by processor (AS 16.51.120(d))			
			Business and occupation tax of 0.484% (extracting classification) on those catching fish in State waters, 0.484% (wholesaling tax) or 0.471% (retailing tax) on those catching fish outside State waters but selling catch in State (unless sold in interstate or foreign commerce); those who catch and sell within the State are liable for both extracting and wholesaling or retailing taxes (but multiple activities tax credit eliminates double tax)		

CRS-9

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
All fisheries, except salmon, halibut, oysters, and crab		Annual limited entry permit renewal fees range from \$50 to \$250 for residents, and from \$150 to \$750 for non-residents (20 AAC 06.240(a)(4)); initial application fee for entry permit is \$100 (20 AAC 06.250(a)); limited entry is in effect for most herring, and for Southeast Alaska sablefish.	Entry moratoria in effect for sea urchin, sea cucumber, Puget Sound whiting, and herring	Annual restricted fisheries permits of \$75 required for ocean pink shrimp, scallop, Yequina Bay roe-herring, and sea urchin	Annual limited entry and restrictive permits range from \$250 to \$1,000

CRS-10

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
		As of 1/1/94, landing tax of 3.9% value of processed fish landed within the State paid by processors (AS 43.77)		Catch fee of 1.09% on all food fish and shellfish, other than salmon and steelhead trout (ORS 508.5061Xb))	Landing tax, based on round weight of \$0.0125 per pound on mollusks and crustaceans (excluding squid and crab), lobster, abalone, swordfish, herring, barracuda, flying fish, frog, giant sea bass, saltwater worms, white sea bass, and yellowtail; \$0.0113 per pound on sea urchin, angel shark, thresher shark, and bonito shark; and \$0.0019 on squid, anchovies, sardines, and mackerel

CRS-11

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA
					California Seafood Council marketing tax ranges from \$0.000241809 per pound (mackerel) to \$0.016133546 per pound (lobster and prawns)
		Fisheries business tax of 3% (floating processor) or 1% (fixed processor) of value for developing fisheries (i.e., other than salmon, halibut, and crab) (AS 43.75.015(b))	Excise tax on enhanced food fish (other than salmon, oysters, and anadromous game fish) of 2.14% (82.27.020 RCW); Harvester may pay half this tax		

CRS-12

	HAWAII	ALASKA	WASHINGTON	OREGON	CALIFORNIA	LOCAL FEES
Various Fisheries		Daily moorage rates - Anchorage (\$125); Bethel (\$0.36 per foot); Cordova (\$0.25 per foot); Craig (\$3.10); Haines (\$3.18); Hoonah (\$4.50); Juneau (\$0.17 per foot); Ketchikan (\$0.31-\$2.42 per foot); King Cove (\$2 per foot under 152 feet; otherwise \$50); Kodiak (\$10.75-\$16); Nome (\$67-\$359); Pelican (\$0.10 per foot); Petersburg (\$0.20 per foot); St. George (\$1.75-\$2 per foot); St. Paul (\$1.75-\$2.50 per foot); Sand Point (\$7-\$70); Seldovia (\$0.30 per foot); Seward (\$4-\$42.74); Sitka (\$0.24 per foot); Skagway (\$0.20 per foot); Tenakee Springs (\$0.16 per foot); Valdez (\$0.25 per foot); Whittier (\$0.30 per foot); Wrangell (\$0.10 per foot); Yakutat (\$5-\$10)	Daily moorage rates - Anacortes (\$0.45-\$0.65 per foot); Bellingham (\$0.25 per foot); Blaine (\$0.25 per foot); Everett (\$0.30 per foot); Friday Harbor (\$0.30 per foot); Ilwaco (\$7-\$8.50); La Conner (\$0.30-\$0.40 per foot); Port Angeles (\$10 plus \$0.20 per foot over 30 feet); Seattle (\$0.21-\$1.03 per foot)	Daily moorage rates - Randon (\$5.50-\$9.50); Brookings (\$6.30-\$12.10); Coos Bay (\$6.16); Depoe Bay (\$10-\$15); Florence (\$6-\$9); Garibaldi Beach (\$8.25-\$12); Newport (\$7.50); Reedsport (\$8-\$10); Warrenton (\$10)	Daily moorage rates - Berkeley Bay (\$0.15 per foot); Crescent City (\$29); Eureka (\$0.35 per foot); Fort Bragg (\$10-\$20); San Francisco (\$5); Sausalito (\$10)	

	MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT	
Bluefin tuna	Annual permit application fee is \$20 (50 CFR 285.21(a))					FEDERAL
Sharks	Annual permit application fee (authorized by 50 CFR 878.4(d)) is \$53 for 1993					FEES
Swordfish	Annual vessel permit fee (authorized by 50 CFR 630.4(d)) is \$53 for 1993					
All fisheries, as required	A Marine Mammal Incidental Take Permit for Category I and II fisheries (identified in 58 FR 32905, 6/14/93) is \$30 per calendar year (50 CFR 229.5(b))					

¹ Excludes fees and taxes specific to aquaculture.

CRS-2

	MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT	STATE FEES
Lobsters and crabs ²	Annual lobster dealer license fee is \$217 (Title 12, §6854); Annual lobster meat permit fee is \$110 (Title 12, §6857)	Annual wholesale trade application fee is \$36 (resident) and \$101 (non-resident)		Annual lobster sellers license fee is \$100; annual lobster dealers license fee is \$200 ³		
	Annual harvester license fee is \$92.75; for ages under 18 or over 70, annual fee is \$48.50 (Title 12, §6421)	Annual harvester license fee is \$104 (resident of five years or more only); annual helpers license fee is \$11	Annual coastal lobster harvester license fee is \$280 (resident only); annual offshore lobster license fee is \$260 (resident) and \$320 (non-resident)	Annual lobster harvester license fee is \$200 (resident only); non-resident landing permit fee is \$200	Annual lobster harvester license fee is \$150 (resident) and \$225 (non-resident); annual blue crab harvester license is \$50	

² Blank entry boxes indicate that State charges for commercially harvesting certain groups of species are not separately identified; in these instances, consult the later section "All fisheries" for any applicable State fees and taxes.

³ State residents may obtain a multipurpose dealers license for all commercial marine species for an annual fee of \$300.

⁴ State residents may obtain a multipurpose harvester license allowing participation in all commercial marine fisheries for an annual fee of \$300, or \$320 with gillnet privileges; annual fee for a non-resident multipurpose landing license is \$300.

	MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT
Shellfish, except lobsters and crabs	Annual dealer transportation license fee is \$259 (Title 12, §8865)			Annual buyer's license fee is \$50; annual shellfish dealers license fee is \$200 ⁶	

⁶ State residents may obtain a multipurpose dealers license for all commercial marine species for an annual fee of \$300.

CRS-4

MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT
Annual commercial hand harvest only license fee for clams, mussels, and quahogs is \$43 (resident) (Title 12, §6601); annual harvester license fee for mahogany quahogs is \$89 (resident) (Title 12, §6731); annual harvester license fee for scallops is \$89 (resident) (Title 12, §§6701-6702)		Annual commercial harvester license fee is \$40 (resident) and \$90 (non-resident); free endorsement available for shellfish with all commercial permit types of individual or greater (i.e., boat or lobster license)	Annual resident commercial harvesting license fee is \$200 for persons between the ages of 20 and 64, no fee for those 65 years or older, and \$50 for those 19 years or younger; non-resident landing permit fee is \$200; annual license fee for dredging by power boat is \$200 (resident); annual license fee of harvesting scallops is \$200 ⁶	Annual seed oyster personal license fee is \$10 (§26-212); annual conch license (for taking more than one-half bushel per day) fee is \$50 (§26-219)

⁶ State residents may obtain a multipurpose harvester license allowing participation in all commercial marine fisheries for an annual fee of \$300, or \$320 with gillnet privileges; annual fee for a non-resident multipurpose landing license is \$300.

CRS-5

	MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT
					Annual seed oyster boat license fee is \$15 (§28-213)
	Annual boat license fee for muskells is \$130 (resident) (Title 12, §6746)			Annual vessel registration fee is \$2	
	Excise tax of \$1.20 per bushel of mahogany quahogs for red tide monitoring (Title 12, §4712)				
Marine worms and other bait	Annual harvester license fee is \$43 (resident) (Title 12, §6751); Annual marine worm dealer license fee is \$55 (Title 12, §6853)	Annual clam worm dealer license fee is \$13.50 (resident only)	Annual bait dealer license fee is \$65 (resident) and \$130 (non-resident); annual soft-shell clam bait special permit fee is \$30 (resident) and \$50 (non-resident)		Annual commercial bait harvester license fee is \$20; annual commercial bait dealer license fee is \$20

CRS-6

	MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT
Menhaden	Annual resident harvester license fee is \$33 (single operator) and \$89 (crew license) (Title 12, §6501); annual non-resident harvester license fee is \$394		In some locations in addition to commercial permit, annual regulated license fee is \$30 (resident) and \$60 (non-resident)		Annual purse seine vessel registration fee is \$50 (resident) and \$750 (non-resident)
Striped bass	No commercial harvest	No commercial harvest	Annual special permit fee for commercial sale is \$10 (resident) and \$50 (non-resident)		
American Shad	No commercial harvest		Annual commercial rod and reel license fee is \$35 (resident) and \$100 (non-resident)		Annual commercial harvesting license fee is \$100
Fluke			Annual special permit fee is \$10 (resident) and \$20 (non-resident)		
Sea Urchin	Annual harvester license fee is \$89 (resident) (Title 12, §§6748, 6748-A, 6748-B)				

	MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT
All fisheries	Annual wholesale seafood dealer license fee is \$217 (Title 12, §6651) ⁷ ; annual retail seafood dealer license fee is \$85 (Title 12, §6652)	Marine species license required for wholesale trade (excluding lobsters and crabs) - annual fee is \$26 (resident) and \$151 (non-resident); extra facility fee is \$11 (resident) and \$51 (non-resident)	Annual wholesale seafood dealer/broker license fee is \$130 (resident) and \$260 (non-resident); annual retail dealer license fee is \$65 (resident) and \$130 (non-resident)	Annual finfish dealers license fee is \$200 ⁸	Annual commercial landing license fee is \$225; annual seafood dealer's license fee is \$25 for lobsters, crabs, finfish, sea scallops, and squid (\$28-142a)

⁷ If wholesale seafood dealer license includes lobster, an additional surcharge of \$200 is required for the Lobster Promotional Council.

⁸ State residents may obtain a multipurpose dealers license for all commercial marine species for an annual fee of \$300.

CRS-8

MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT
Annual harvester license fees range from \$10 to \$130 (resident) and from \$84 to \$334 (non-resident) (Title 12, §§6501-6903)	Annual commercial harvester license fee (excluding lobsters and crabs) is \$26 (resident); non-resident pays what State of residence charges a non-resident, but not less than \$200.00; license includes 3 helpers	Annual harvester license fee is \$65 (resident) and \$130 (non-resident); in some areas for certain gear or species, additional regulated license fee is \$30 (resident) and \$60 (non-resident)	Annual individual harvester (nets or other gear) license fee is \$200 (without use of any vessel) ⁹ ; non-resident finfish landing license fee is \$200	Annual harvester license fee is \$60 (resident) and \$100 (non-resident) for gillnets, eel pots, fyke nets, seines, scoop nets, fish pots, cast nets, and commercial hook-and-line (for species not regulated by a creel limit) (§26-142a)
	Annual additional commercial crew member/helper license fee is \$11			

⁹ State residents may obtain a multipurpose harvester license allowing participation in all commercial marine fisheries for an annual fee of \$300, or \$320 with gillnet privileges; annual fee for a non-resident multipurpose landing license is \$300.

CRS-9

MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT
		For vessels less than 60 ft, the annual commercial vessel license fee is \$130 (resident) and \$290 (non-resident); for vessels between 60 and 99 ft, the annual license fee is \$196 (resident) and \$390 (non-resident)	Annual commercial vessel or vessel operator license fee is \$200 (vessels 50 ft or less), \$250 (vessels 50 to 99 ft), or \$20 per linear foot for vessels 99 ft or longer - these fees do not apply to lobster; or shellfish; or non-resident otter, beam, and pair trawl fisheries	

CRS-10

	MAINE	NEW HAMPSHIRE	MASSACHUSETTS	RHODE ISLAND	CONNECTICUT	LOCAL FEES
					Annual marine pound net registration fee is \$100; annual bottom trawling license fee is \$150 (resident) and \$225 (non-resident); commercial hook-and-line license fee for species regulated by a creel limit (e.g., bluefish) is \$100 (resident) and \$200 (non-resident) (§28-142a)	
			Annual commercial rod and reel license fee is \$35 (resident) and \$100 (non-resident)	Annual commercial gear license fee for fish traps and gill nets is \$200, plus \$20 per size and \$10 recording fee for gillnetting; annual commercial harvester license fee for diving and/or rod and reel is \$200; annual non-resident license fee for other, beam, or pair trawls is \$5 per linear vessel-foot; annual eel or conch pot license fee is \$200		
Shellfish			Town permit required			
All fisheries			Harbor moorage fees vary by local jurisdiction			



**The
Marine
Fish
Conservation
Network**

"...To Protect, Restore, and Conserve Marine Fisheries."

June 27, 1994

The Honorable Thomas Manton, Chairman
Subcommittee on Fisheries Management
House of Representatives
203 Cannon House Office Building
Washington, DC 20515

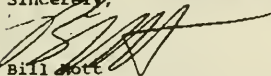
Dear Chairman Manton:

On behalf of the Marine Fish Conservation Network, which represents more than five million individuals across our country, I would like to bring an important matter to your attention. We have learned that your subcommittee plans to hold a hearing this Wednesday, June 29, regarding the Magnuson Fishery Conservation and Management Act reauthorization. The subject of the hearing has not been made totally clear: whether it is the subject of user fees or a more broad review of the Magnuson Act.

Apparently only one witness, from the Administration, has been asked to testify. I would like to request that Representative Wayne Gilchrest, a Member of the Merchant Marine and Fisheries Committee and author of a bill on reauthorization of the Magnuson Act with approximately four dozen cosponsors as of last week, be asked to testify at this hearing. The Network feels very strongly that Representative Gilchrest should be given an opportunity to discuss his bill with the subcommittee. If he is not allowed to testify at this week's hearing, I would request that a hearing be scheduled in the near future where Representative Gilchrest could testify on his bill.

There is strong support around the country in both the conservation and the fishing communities, and among the general public, to strengthen the Magnuson Act. Never before has there been a bill such as Representative Gilchrest's that addresses the critical issues in a comprehensive manner. The unprecedented number of cosponsors for his bill demonstrates that it deserves more attention from the subcommittee. Thank you for your consideration of this important matter.

Sincerely,


Bill Mott
Campaign Director

cc: The Honorable Gerry Studds
The Honorable Wayne Gilchrest

Steering Committee:

Center for Marine Conservation • Greenpeace • National Audubon Society • National Coalition for Marine Conservation • World Wildlife Fund

1725 DeSales Street, NW, Suite 500 • Washington, DC 20036 • Tel. (202) 857-3274 Fax (202) 872-0619



The
Marine
Fish
Conservation
Network

"...To Protect, Restore, and Conserve Marine Fisheries."

June 30, 1994

The Honorable Thomas J. Manton, Chairman
House Subcommittee on Fisheries Management
203 Cannon House Office Building
Washington, DC 20515

Dear Chairman Manton:

On behalf of the Marine Fish Conservation Network, I would like to thank you for allowing Representative Gilchrest to testify yesterday at your Subcommittee hearing. The Network strongly supports H.R. 4404 and we are working with Representative Gilchrest, his staff, and others in Congress to secure additional cosponsors to the Marine Fish Conservation Amendments of 1994. We certainly hope much of what is included in H.R. 4404 will be adopted by your staff and included in your committee bill.

In addition, I would like to request that the enclosed materials be included in the official record, as they apparently were mistakenly left out last March. I've included a copy of the Network's proposal to strengthen the Magnuson Fishery Conservation and Management Act, as well as a list of Network member organizations that support these recommendations.

The Network, including more than 65 fishing and conservation organizations, are ready and willing to help you and your staff on any aspect of the reauthorization. We cannot express enough how important it is to strengthen the Magnuson Act this session.

Thank you very much for your leadership on this increasingly important issue.

Sincerely,

William S. Mott
Campaign Director

Steering Committee:

Center for Marine Conservation • Greenpeace • National Audubon Society • National Coalition for Marine Conservation • World Wildlife Fund

1725 DeSales Street, NW, Suite 500 • Washington, DC 20036 • Tel. (202) 857-3274 Fax (202) 872-0619



The Marine Fish Conservation Network

"...To Protect, Restore, and Conserve Marine Fisheries."

The following organizations are members of the Network
(as of June 15, 1994):

Alaska Longline Fishermen's Association
Alaska Marine Conservation Council
Alliance of Rhode Island Saltwater Fishing Clubs
American Oceans Campaign
Atlantic Salmon Federation
Bass Anglers Sportsman's Society
The Billfish Foundation
Caribbean Conservation Corporation
Carrying Capacity Network
Center for Marine Conservation
Chesapeake Bay Foundation
City of St. Paul/Bering Sea Coalition
Coastal Waters Project
Columbus (OH) Zoological Gardens
Concerned Citizens of Montauk
Conservation Law Foundation
Deep Pacific Fishing Company
Environmental Defense Fund
Fishermen's Emergency Fund
Fish Forever
Fish Unlimited
Fisheries Defense Fund
Florida League of Anglers
Greenpeace
Hawaii Fishermen's Foundation
Hawaiian International Billfish Association
Interfaith Council for the Protection
of Animals and Nature
International Game Fish Association
Jersey Coast Anglers Association
Maine Animal Coalition
Maine Lobsterman's Association
Maryland Saltwater Sportfishermen's Association
Massachusetts Audubon Society
Massachusetts Wildlife Federation
Mid-Coast Anglers

Mystic River-Whitford Brook Watershed Association
The National Aquarium (DC)
NAUI (National Assoc. of Underwater Instructors)
National Audubon Society
National Coalition for Marine Conservation
National Fishing Association
Natural Resource Consultants (Idaho)
Natural Resources Defense Council
New England Aquarium
New England Coast Conservation Association
NY/NJ Harbor Baykeeper
New York Sportfishing Federation
North Pacific Fisheries Protection Association
North Pacific Longline Association
Oregon Natural Resources Council
Oregon Trout
Oregon Wildlife Federation
Pacific Center for International Studies
People for Puget Sound
PADI (Professional Assoc. of Diving Instructors)
Project ReefKeeper
Salt Water Sportsman Magazine
Save Our Shores
Sierra Club
Society for Conservation Biology
The Sounds Conservancy
Sport Fishing Institute
Trustees for Alaska
United Anglers of California
United Fisherman's Association
Wildlife Conservation Society
World Wildlife Fund

Steering Committee:

Center for Marine Conservation • Greenpeace • National Audubon Society • National Coalition for Marine Conservation • World Wildlife Fund

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Marine
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Conservation
Network

"...To Protect, Restore, and Conserve Marine Fisheries."

**Proposal to Strengthen the
Magnuson Fishery Conservation and Management Act of 1976:**

**Summaries of the Major Issues,
Needed Action, and
Suggested Amendment Language**

Submitted by

The Marine Fish Conservation Network

October 1993

Sponsoring Committee:

Center for Marine Conservation • Greenpeace • National Audubon Society • National Coalition for Marine Conservation • World Wildlife Fund

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The Marine Fish Conservation Network

"...To Protect, Restore, and Conserve Marine Fisheries."

Proposed Amendments to the Magnuson Fishery Conservation and Management Act of 1976

Objective - ELIMINATE OVERFISHING AND REBUILD DEPLETED FISH POPULATIONS

The Marine Fish Conservation Network urges Congress to strengthen the Magnuson Act to make the prevention of overfishing the priority over all other considerations. The Act should be amended to make it explicit that the intent of the law is to eliminate overfishing, by including language that will compel fishery managers to stop overfishing and rebuild overfished populations in a timely and effective manner.

Summary of the Problem

The Magnuson Act mandates that conservation and management measures must prevent overfishing. But in most cases, managers react to overfishing after it occurs. A recent report by the National Marine Fisheries Service disclosed that 67 species or species groups are overfished, or 43% of those species assessed (Our Living Oceans, 1992). Because of overfishing, the same report says, U.S. fisheries produce only half their potential yield, resulting in losses of about \$3 billion a year to the nation's fishing economy.

A major flaw in the Magnuson Act is that it does not expressly prohibit overfishing. What it says is that "Conservation and management measures shall prevent overfishing while achieving the optimum yield from each fishery on a continuing basis." [§301(a)(1)] "Overfishing" is not defined in the law. However, "optimum" yield is defined as the maximum sustainable yield (a biological determination) "modified by any relevant economic, social or ecological factors." [§3(21)(B)] The problem is that this definition of optimum yield puts economic, social and biological factors on equal footing. Managers may, and often do, subordinate conservation objectives to short-term economic interests, resulting in an optimum yield that is higher than the sustainable biological yield.

The NMFS guidelines for the development of fishery management plans [50 CFR §602.11] direct the Councils to define overfishing and prepare a recovery plan when a condition of overfishing exists. Even so, the guidelines do not carry the force of law. Moreover, they make no provision for what happens if a Council does not recognize that overfishing is occurring, nor do they specify the time period in which a Council must take remedial action. Finally, the guidelines do not require that Councils establish a specific rebuilding goal and a time limit for reaching that goal.

Although the National Standards require that conservation and management measures shall be based upon the best scientific information available [§301(a)(2)], Councils frequently ignore the

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advice given to them by scientists (whether Council staff, members of the Council's S&S Committee or NMFS employees) with the result that the recommendations of some management plans bear little relation to the information provided.

Needed Action

The Marine Fish Conservation Network believes the Magnuson Act should be amended to:

- define and prohibit overfishing;
- emphasize biological and ecological factors over economic factors in decision-making;
- require each management plan to contain an objective and measurable definition of overfishing consistent with the statute but tailored to the fish populations covered by the plan;
- require that, when overfishing is occurring, the Councils prepare a recovery program featuring a specific rebuilding goal and a timetable for achieving that goal;
- mandate that conservation and management measures include a safety margin to provide a buffer against overfishing;
- require that the Secretary determine that the management action proposed by the Council is consistent with the best scientific information available;
- authorize the Secretary to intervene when a Council fails to make a required determination that a condition of overfishing exists and/or fails to develop a satisfactory recovery plan within a specified period of time;
- direct the Secretary to publish a list of overfished species, and prepare a research plan for those species whose status is unknown;
- for overfished species not covered by a fishery management plan, require the Secretary to prepare a recovery plan; and
- provide the councils and the Secretary with authority to take interim conservation steps in the absence of a plan.

**Objective - ELIMINATE OVERFISHING AND
REBUILD DEPLETED FISH POPULATIONS**

Amendments Suggested by the Marine Fish Conservation Network:

· §3. DEFINITIONS

(22) (amended)

The term "optimum," with respect to the yield from a fishery, means the amount of fish --

(A) which will provide the greatest overall benefit to the Nation [with particular reference to food production and recreational opportunities]; and

(B) which is prescribed as such on the basis of the maximum sustainable yield from such fishery, as modified by any relevant economic, social, biological, or ecological factor[.], provided that economic and social factors do not increase the yield above maximum sustainable yield, compromise ecological integrity or lead to or prolong overfishing, or impede recovery from such overfishing.

(23)(new)

The term "overfishing" means either a level or a rate of fishing that either jeopardizes the capacity of a fish species, population, or population complex to provide maximum sustainable yield on a continuing basis or compromises ecological integrity.

· §301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

(amend §301(a)(1) as follows)

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery [for the United States fishing industry].

(new provision)

Insert at (a)(3) (renumbering (3) as (4) and so on) --

In order to account for inadequacies in data, uncertainties in the best available scientific information, and unpredictable variations and fluctuations in fish populations and catches, and to provide for the ecological needs of the species that interact within a management unit, conservation and management measures shall provide an adequate margin of safety to act as a buffer against overfishing.

(b) GUIDELINES.

(Amended as follows:)

– The Secretary shall establish [advisory] guidelines [which shall not have the force and effect of law], based on the national standards, to assist in the development of fishery management plans.

- §303. CONTENTS OF FISHERY MANAGEMENT PLANS

(a) REQUIRED PROVISIONS -- Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(10) specify an objective definition of overfishing for each fish species or population involved in the fishery, as described pursuant to paragraph (2) of this section, such definition to be developed or expressed in terms of a minimum level of spawning biomass, maximum level or rate of fishing mortality, or other measurable standard designed to ensure the maintenance of the fish population's abundance, age structure, sex ratio, and size structure so as to preserve its capacity to provide maximum sustainable yield and maintain ecological integrity. Within 90 days of enactment of this provision, the Secretary shall review each existing fishery management plan as amended for consistency with this requirement and notify the Council involved of his or her finding. Within 180 days of notification, an amendment must be prepared and submitted to the Secretary for any existing fishery management plan not approved under this section to add a definition of overfishing as specified in this paragraph.

(11) with respect to any fishery management plan or amendment relating to a fishery for which a determination has been made that such fishery is overfished, contain a recovery plan which will establish measures for rebuilding the fish species, population, or population complex in accordance with specifications for a recovery plan set forth in section 304(h)(2).

- §304(b) REVIEW BY THE SECRETARY (amended)

(2) If after review under subsection (a) the Secretary determines that the plan or amendment is not consistent with the criteria set forth in paragraph 1(B) of that subsection or with the best scientific information presented to the Council by scientists participating in the plan development process, the Secretary shall notify the Council in writing of his or her disapproval of the plan or amendment.

- §304(c) PREPARATION BY THE SECRETARY (amended)

(1) The Secretary [may] shall prepare a fishery management plan, including a recovery plan if required, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if --

(A) the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management;

(B) the appropriate Council fails to develop and submit to the Secretary a recovery plan as required pursuant to subsection (h) of this section, within the time specified therein;

(C) the Secretary determines that a fish species, population, or population complex is overfished, pursuant to paragraph (e)(4) of this section, and if no fishery management plan or required part thereof, with respect to such fishery is in force and if no such plan or amendment is submitted by the appropriate Council to the Secretary for approval within 240 days of being notified of such determination; or

(D) the Secretary determines, based upon the best scientific information available,

whether or not a fishery management plan exists and irrespective of any objective definition of overfishing therein, that a fish species, population, or population complex either--

(i) has sustained fishing mortality that either exceeds maximum sustainable yield by more than ten percent per annum averaged over a period of three consecutive years or

(ii) is depleted.

Such a determination shall constitute a determination of overfishing which requires a recovery plan. Notwithstanding the foregoing, the Secretary may determine that a fish species or population is not overfished, based upon the best scientific information available, only when such determination is based on a clear preponderance of such scientific information. Nothing in this paragraph shall prevent a more stringent objective definition of overfishing under a fishery management plan, pursuant to section 304(e) or pursuant to a judicial determination. For this purpose, a fish species or population shall be deemed "depleted" when it is determined by the Secretary using the best available scientific information and a calculation that provides a risk-averse assessment, that the spawning population is adequate to provide maximum sustainable yield and maintain ecological integrity. If the size of the spawning population cannot be determined, alternative measures may be used subject to approval by the Secretary.

(E) the Secretary disapproves or partially disapproves any such plan or amendment, or disapproves a revised plan or amendment, and the Council involved fails to submit a revised or further revised plan or amendment, as the case may be.

· §304(e) OVERFISHING LIST AND FISHERIES RESEARCH

(new provision)

(4) No less than one year after the date of enactment of this provision and each year thereafter, the Secretary shall, after consultation with the appropriate Council(s) and based on the best scientific information available, prepare and publish in the Federal Register a list of fish species, populations, and population complexes that are overfished and the objective definition of overfishing utilized by the Secretary to make that determination. Such determination can be made whether or not a fishery management plan exists or contains an objective definition of overfishing and need not be in conformity with any such plan. In such cases where scientific data are severely limited, the Secretary's informed judgment must be used. In the case of fish species, populations, and population complexes for which there is insufficient information to make such a determination, the Secretary will develop a research plan to identify and gather the needed data. The plan shall--

(A) identify priority research needed to assess the condition of the fish species, populations, and population complexes and support fishery conservation and management;

(B) describe a research program to achieve these priority objectives; and

(C) indicate the timetable for achieving the goals outlined in (A) and (B).

· §304(h) RECOVERY PLANS (new subsection)

(1) In the event that the Secretary determines that a condition of overfishing has occurred with respect to a fish species, population, or population complex subject to a fishery

management plan, based on the best scientific information available and the definition of overfishing specified in such plan, the Secretary shall notify the appropriate Council(s) in writing of such determination;

(2) Within 180 days after the receipt of such notice, the appropriate Council(s) shall prepare and submit to the Secretary for approval an amendment to the applicable fishery management plan, including a recovery plan that specifies:

(A) the action or combination of actions to be taken to rebuild the fish species, population, or population complex specified in the notice;

(B) the time within which such rebuilding shall be accomplished, which shall be no greater than five years, with a periodic review of progress of the plan no less than annually beginning in the third year;

(C) such time set forth in subsection 304(h)(2)(B) may be extended only upon a determination by the Secretary, based upon the best available scientific information (which must include at a minimum information from the annual progress report), that a longer period will be required due only to the reproductive capacity, productivity, or life span of the fish species; and

(D) the level of abundance to which such fish populations or population complexes are to be rebuilt to provide maximum sustainable yield and maintain ecological integrity.

(3) The Secretary shall review and act upon such amendment within 180 days after receipt and in accordance with the procedures set forth in this section.

• **§305(new) INTERIM MEASURES** (new subsection - renumber)

(1) In the absence of a fishery management plan which contains such a provision, the Secretary or the appropriate Council (subject to approval by the Secretary) may adopt as an interim measure regulations with respect to any fish species, population, or population complex consisting of specific provisions to conserve such fish species, population, or population complex, including (but not limited to) a provision setting a minimum size to increase yield per recruit, prohibiting a type of fishing gear, or closing an area to fishing.

(2) Any interim measure which changes any existing fishery management plan or amendment shall be treated as an amendment to such plan for the period in which such regulation is in effect.

(3) Any interim measure shall not constitute a recovery plan for purposes of sections 303(renumbered), 304(c), and 304(h). Any interim measure promulgated under this subsection shall remain in force for one year after its adoption, unless (1) it is specifically limited to a lesser period or superseded by a fishery management plan or amendment thereto, or (2) the Secretary, initially or prior to the expiration of the interim measure, follows the procedures to review and approve the measures that are applicable to a fishery management plan, or amendment to a plan, contained in section 304.

• **§ 305(new) CITIZEN SUITS PROVISION** (new subsection - renumber)

Add new subsection as follows:

CITIZEN SUITS

(1) In General. Except as provided in subsection (2), any person may commence a civil action on his or her own behalf against the Secretary or the appropriate Council where there is alleged a violation of any provision of this Act or any regulation promulgated thereunder, or a failure of the Secretary to perform any act or duty under this Act which is not discretionary with the Secretary, or the appropriate Council, as the case may be, to perform such act or duty.

(2) Notice. No action may be commenced under subsection (1) before the 60th calendar day after the date on which the plaintiff has given notice of such action to the Secretary and the affected Council where the action is directed against such Council; except that such action may be brought immediately after such notification in the case of an action under this section respecting an emergency posing a significant risk to the well-being of any fishery resource. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by regulation. Until the adoption of such regulation on the manner of notice, delivery of notice upon the Secretary by First Class, prepaid United States Mail, with proof of mailing, shall satisfy the notice requirement herein.

(3) Costs. The court, in issuing any final order in any suit brought pursuant to subsection (2), may award costs of litigation, including reasonable attorney and expert witness fees, to any party whenever the court determines such award is appropriate.

(4) Other rights. Nothing in this section shall restrict or expand any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement or to seek any other relief.

(5) Intervention. In any action under this section, any person may intervene as a matter of right when such person has a direct interest which is or may be adversely affected by the action and the disposition of the action may, as a practical matter, impair or impede the person's ability to protect that interest unless the United States or another party shows that the person's interest is adequately represented by existing parties in the action.

· § 305(new) CITIZEN PETITIONS PROVISION

Add new subsection as follows:

CITIZEN PETITIONS

(1) In general -- Any interested person may petition the Secretary at any time to make any finding or determination, or take any other action authorized by this Act. The petition shall include such substantial information as may be necessary to demonstrate the need for the action requested by the petition.

(2) Consideration and ruling -- To the maximum extent practicable, within 90 days after receiving the petition of an interested person to make a finding or determination, or take any other action authorized by this Act, the Secretary shall make a ruling as to whether the

petition presents substantial information indicating that the petitioned action may be warranted. The Secretary shall promptly publish such ruling in the *Federal Register* and, if the petition is found to present such information, the Secretary shall undertake to make a finding or determination, or take any other action authorized by the relevant provisions of this Act.



The Marine Fish Conservation Network

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Proposed Amendments to the Magnuson Fishery Conservation and Management Act of 1976

Objective - REFORM THE REGIONAL FISHERY MANAGEMENT COUNCILS

The Marine Fish Conservation Network believes that reform of the Fishery Management Councils is a fundamental issue for reauthorization of the Magnuson Act. We recommend amending the Act to ensure a fairer representation of the broad public interest among Council membership, and to prohibit Council members from voting on issues in which they have an economic interest.

Summary of the Problem

The Regional Fishery Management Council system, whereby management decisions are made at the regional level, as close to the fishers and other interested members of the public as possible, is a cornerstone of the Magnuson Act. However, by including active fishing industry representatives as voting members of the Councils, Congress also paved the way for potential conflicts of interest in fishery management decisions. Individuals cannot be expected to vote objectively when their financial interests are at stake and, in fact, there have been numerous cases of conflict of interest throughout the Council system.

As adopted by Congress, the Act originally established mechanisms for reducing conflicts of interest. The National Standards, Secretarial and judicial review, and the requirements of the Federal Advisory Committee Act (FACA) and Title 18 of the U.S. Code, §208 (the rules prohibiting government employees from engaging in conflicts of interest), all could be used to address the problem. However, over time these safeguards were eroded to such a degree that there are now few constraints on Council members.

As a result of various re-authorizations of the Act, Councils are no longer subject to FACA or 18 U.S.C. §208. While the Act requires voting members to disclose information concerning economic interests in fisheries, the requirement does not prohibit them from voting on matters affecting those interests. Furthermore, the courts have been reluctant to challenge the expertise of the Councils and advisory committees, leaving only procedural matters and cases of "arbitrary and capricious" actions for judicial review.

Meanwhile, fishing interests dominate the Councils. Language added in 1986 directed the Secretary of Commerce to give priority for Council membership to active participants in fisheries or their representatives over those simply knowledgeable individuals. Non-fishers experienced in fisheries conservation and management, therefore, frequently would not meet the qualifications for membership on the Councils. While that requirement has since been modified so that knowledge of conservation and management may be considered sufficient experience to be a voting Council member, there is still inadequate non-user representation on the Councils.

Finally, many observers of the Council system have noted that another source of conflict of interest is the designated state official. These individuals, by virtue of their positions as state employees, are often beholden to the dominant political/constituent interests in their home states, and therefore may be constrained from voting in an objective manner. This additional potential for conflict among designated Council members only serves to underscore the need to reduce the potential for conflict of interest among Council appointees.

Needed Action

The Marine Fish Conservation Network views reform of the Council system as necessary to the attainment of the conservation objectives of the Act. The Network's proposals are designed to improve the existing system of fisheries management. We offer these as a preferred alternative to proposals being advocated by some which would completely overturn and re-structure the Council system. In order to make the present system work, we recommend the following:

- prohibit members from voting on matters relating to a fishery in which they have a financial interest;
- authorize the Secretary to remove any Council member for violating disclosure and conflict of interest provisions, and provide the Secretary with the authority to reject a plan or amendment whose passage was contingent on a conflict of interest vote;
- provide the Secretary with adequate tools for determining conflicts of interest;
- increase participation of knowledgeable individuals who are not actively involved in the fisheries; and
- enhance the role of advisory panels as a means to provide information to the councils and to encourage participation by knowledgeable individuals early in the council discussion process.

**Objective - REFORM THE
REGIONAL FISHERY MANAGEMENT COUNCILS**

Amendments Suggested by the Marine Fish Conservation Network:

• **§302(b). VOTING MEMBERS**

Amend (2)(B) as follows --

The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. In addition, the Secretary, in making appointments under this section, shall ensure that no fewer than 25% of the appointed members of each Council are persons selected for their fisheries expertise, as demonstrated by university, environmental organization, or other non-user group affiliation and by past actions and accomplishments.

Add to paragraph (5) at the end of the first sentence -- or if the Secretary makes a written determination, including a statement of the reasons for such determination, that the member has violated conflict of interest provisions of subsection (k) of this section as amended.

• **§302(e). TRANSACTIONS OF BUSINESS (new - renumber)**

(2) Each decision of the Council shall be recorded through a roll call vote such that the vote of individual members is registered and forwarded with the decision to the Secretary for review under §304.

• **§302(k). DISCLOSURE OF FINANCIAL INTEREST**

Add **AND RECUSAL** at end of section heading.

Rewrite paragraph (2)(B) as --

the spouse, [minor] children, grandchildren, parents, or partner of that individual;

Add a new subsection (5)(C) --

be kept on file with the Secretary for use in reviewing Council actions as required under §304 and made available for public inspection at reasonable hours.

Amend paragraph (6) as --

The participation by an affected individual referred to in paragraph (1)(B) or (C) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under [paragraph (5) may not] this subsection (§302(k)) may be treated as cause for the invalidation of that action if the vote of that individual was necessary for approval of that action under subsection (e).

Strike paragraph (7). {Exemption from 18 U.S.C. §208}

Add new paragraph (7) -- A Council member holding a financial interest requiring disclosure under provisions of this subsection shall recuse him or herself from voting on or participating

in all Council actions that would affect such financial interest. Council members and the public may submit, in writing, a challenge to the vote of any Council member for violation of this provision to the Secretary for review under §304.

· §304. ACTION BY THE SECRETARY

Add paragraph (2)(D) under subsection (a) --
evaluate the action for violation of §302(k).

Under subsection (b), add new paragraph (3) and renumber --
If the Secretary determines that a Council member voted in violation of §302(k) in any Council action, the Secretary shall disapprove the action if that vote was necessary for approval of the action and may remove the member or members in question under the provisions of §302(b)(5).



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**Objective - IMPROVE CONSERVATION AND
MANAGEMENT OF LARGE PELAGIC FISHES**

The Marine Fish Conservation Network urges Congress to amend the Magnuson Act to allow domestic fishery management actions for large pelagic fishes (the so-called "highly migratory species") to be more restrictive than those recommended by international agreement, when such action is deemed necessary to achieve U.S. conservation and management goals. Additionally, we recommend that Congress return management responsibility for large pelagics to the Atlantic Fishery Management Councils.

Summary of the Problem

The Atlantic bluefin tuna, blue marlin, white marlin, Atlantic swordfish, and several species of large coastal sharks are overfished. These large pelagic fishes, along with other species of tuna, shark, and billfish, are defined as "highly migratory species" in the Magnuson Act, because of their migrations throughout and beyond the U.S. 200-mile zone. They are not, however, the only species under U.S. jurisdiction to exhibit such migratory behavior (ref. salmon, whiting, anchovy, etc.).

International management of these fish has failed to prevent overfishing or even to rebuild depleted populations. Despite having jurisdiction over Atlantic tuna and billfish since 1969, the International Commission for the Conservation of Atlantic Tunas (ICCAT) did not act to prevent overfishing of bluefin tuna, swordfish and marlin. Current ICCAT management plans for bluefin and swordfish are inadequate to rebuild these fisheries. Yet the Magnuson Act, as amended in 1990, forbids U.S. regulations from being more restrictive than those measures agreed to at ICCAT, even when those measures are ineffective.

The Act itself recognizes that international management measures alone are not effective [§2(a)(4)]. Moreover, restricting the scope of conservation and management measures promulgated under the Magnuson Act is wholly inconsistent with other U.S. law, is unique among ICCAT treaty nations, and undermines U.S. authority to properly manage our own fisheries in our own waters. In effect, handcuffing domestic regulations to ICCAT makes the Magnuson Act irrelevant to the management of large pelagic fishes in the Atlantic.

The transfer of domestic management of Atlantic highly migratory species from the Regional Councils to the Secretary, also by amendment in 1950, is inconsistent with the management system devised by Congress for all other species under U.S. jurisdiction, as well as the Act's stated policy of assuring that conservation and management measures involve and are responsive to the needs of interested and affected citizens. [§2(c)(3)] Denying the Atlantic Councils management of these important fisheries has significantly reduced public input into the management process and accountability of fishery managers to the public. As a result, it has seriously eroded public confidence in management decisions.

Since 1990, Secretarial/NMFS management of highly migratory species in the Atlantic has been limited primarily to implementing ICCAT regulations, despite the overfished condition of most highly migratory species under its jurisdiction. (The Western Pacific Council, on the other hand, has amended its domestic large pelagic plan to include tunas.) The only exception is a Secretarial plan for Atlantic sharks, a plan that started out as an emergency action in 1989 but took four years to complete - during which time some species of sharks may have been seriously overfished.

Needed Action

The Marine Fish Conservation Network urges Congress to:

- repeal language added in the Fishery Conservation Amendments of 1990 limiting domestic authority over highly migratory species to implementing international recommendations, along with the repeal of similar language added to the Atlantic Tunas Convention Act in 1990;
- repeal language transferring U.S. authority from the Atlantic Councils to the Secretary, at the same time amending the Act to facilitate preparation of multi-Council plans;
- strengthen the U.S. posture in international negotiations by designating the Director of the National Marine Fisheries Service as head of the U.S. delegation to ICCAT; and
- amend the Atlantic Tunas Convention Act (16 U.S.C. 971) to prohibit appointment as Commissioners individuals who have a direct financial stake in the fisheries under the Commission's jurisdiction.

**Objective - IMPROVE CONSERVATION AND
MANAGEMENT OF LARGE PELAGIC FISHES**

Amendments Suggested by the Marine Fish Conservation Network:

• **§304(f) FISHERIES UNDER AUTHORITY OF MORE THAN ONE COUNCIL**

Strike paragraphs (3)(A) through (F).

• Amend paragraph (1), last sentence, to read as follows -

No jointly prepared plan or amendment may be submitted to the Secretary unless it is approved by a majority of [the voting members, present and voting, of each council concerned] all of the combined individual voting members of the concerned Councils present and voting.

• Add a new paragraph (3) as follows:

Any fishery management plan or amendment which --

(A) addresses a highly migratory species fishery to which section 304(f)(1) applies,

(B) was prepared by the Secretary, and

(C) was in force and effect on July 1, 1993,

shall remain in force and effect until superseded by a fishery management plan or amendment prepared by the appropriate Council(s), and approved by the Secretary.

• **§102. HIGHLY MIGRATORY SPECIES (amended)**

The United States shall cooperate directly or through appropriate international organizations with those nations involved in fisheries for highly migratory species with a view to ensuring conservation and promoting the objective of optimum [utilization] yield of such species throughout their range, both within and beyond the exclusive economic zone.

• **ATLANTIC TUNAS CONVENTION ACT (amended)**

• Amend §3(a) as follows --

In (1) insert after "at the pleasure of the President" the following:

One Commissioner shall be director of the National Marine Fisheries Service or his or her designee, who shall be the only Commissioner who is a salaried employee of any State or political subdivision thereof, or the Federal Government. No Commissioner shall be an individual with a financial interest or serving as an officer, director, trustee, partner or employee with an organization that has a financial interest in any catching, harvesting, processing, or marketing activity that is undertaken within any fishery over which the Commission has jurisdiction.

Strike (2) and renumber.

• Amend §6(C)(3)(k) to read --

except that no regulation promulgated under this section may have the effect of increasing [or decreasing] any allocation or quota of fish to the United States agreed to pursuant to a recommendation of the Commission.



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Objective - MINIMIZE BYCATCH

The Marine Fish Conservation Network urges Congress to address the destructive and wasteful bycatch problem in marine fisheries. The U.S. needs a national policy to reduce and, wherever possible, eliminate bycatch and its harmful effects on fish populations and the marine ecosystem. Congress should develop terms and definitions to characterize bycatch and create a framework through which bycatch problems can be resolved in Fishery Management Plans (FMPs). It is not enough to avoid waste by finding alternative markets for non-target fish.

Summary of the Problem

Bycatch, usually the result of using non-selective fishing gear, comes in many forms, from the catch of species that are unwanted to those that are prohibited. This includes undersized fish; fish reserved for a specific gear type; low value fish or fish for which no market exists; hooked or netted fish damaged by sharks or other predators; fish killed by "ghost fishing" of lost or abandoned gear; and fish killed but lost during fishing operations. The problems caused by bycatch include overfishing, waste of resources, loss of economic opportunity, and potentially serious ecological impacts including disruptions of predator/prey interactions and changes in bio-community structure.

Currently, bycatch is regulated in cases where the bycatch species are protected under non-fishery laws. For example, shrimp trawlers must use turtle excluder devices (TEDs) in their nets because of their catch of endangered turtles. The impetus for that regulation was the Endangered Species Act. Drift nets are highly regulated because of interactions with marine mammals protected under the Marine Mammal Protection Act. Where fish are concerned, however, bycatch is usually only restricted when it is particularly valuable to competing fishers.

Neither the Magnuson Act nor the 602 guidelines for preparing FMPs specifically deal with bycatch. Managers may account for bycatch impacts in developing plans, but they seldom do. Agenda 21, the blueprint that emerged from the Environmental Summit at the UN Conference on Environment and Development, includes language urging fishing nations to "promote the development and use of selective gear and practices that minimize the waste of catch of target species and minimizes bycatch of non-target species." The Magnuson Act needs similar, more specific regulations designed to reduce or eliminate bycatch.

Needed Action

The Marine Fish Conservation Network recommends that the Magnuson Act be amended to provide broader authority to manage bycatch problems. The Act should:

- explicitly define bycatch and establish a national policy to reduce bycatch in all commercial fisheries to "insignificant levels approaching zero";
- include a new national standard on reducing bycatch;
- require the use of selective gear which minimizes bycatch mortality;
- require all fishery management plans to establish a program for reducing bycatch by all gear within the plan's jurisdiction;
- mandate a comprehensive assessment of the level of bycatch of all gear in each fishery;
- strengthen existing conservation engineering programs within the federal government by increasing funding and establishing cooperative efforts with the fishing industry in research and development of new, more selective gear. These efforts should be funded by increased appropriations and fees imposed on those fishing operations with significant levels of bycatch; and
- require the Councils, in cooperation with NMFS, to develop programs with a sufficient level of incentives and disincentives to encourage participation of all fishing boats in bycatch measurement and reduction efforts, while requiring participation of those boats with bycatch levels above a certain threshold.

Objective - MINIMIZE BYCATCH

Amendments Suggested by the Marine Fish Conservation Network:

• §2(c). POLICY (amended)

(3) to assure that the national fishery conservation and management program...considers the effects of fishing on immature fish and encourages development of practical measures that reduce bycatch to insignificant levels approaching zero and avoid unnecessary waste of fish;

• §3. DEFINITIONS (new - renumber)

(2) The term "bycatch" means the incidental catch, take or harvest of:

(A) marine mammals, birds, turtles, and fish that are not the target species of the fishery in which a fishing vessel is engaged,

(B) all fish discarded or lost during fishing operations, and

(C) fish of the same species targeted by the fishery in which a fishing vessel is engaged which are prohibited by conservation and management measures promulgated under a fishery management plan.

(7) The term "fish" means finfish, mollusks, crustaceans, and all other forms of marine animal and plant life other than marine mammals, turtles, and birds.

(28) The term "target species" refers to the species or species groups for which the vessel is fishing.

• § 301. NATIONAL STANDARDS

Amend subsection (a)(1) as follows:

(New) (renumber)

(9) Conservation and management measures shall reduce bycatch to the lowest level practicable and avoid unnecessary waste of fish.

• §303. CONTENTS OF FISHERY MANAGEMENT PLANS (new - renumber)

(a) REQUIRED PROVISIONS. -- Any fishery management plan which is prepared by any Council, or by the Secretary, with respect to any fishery, shall--

(12) specify allowable gear types for the fishery,

(13) require the use of gear types which minimize bycatch and associated mortality,

(14) assess the bycatch of all gear types used in the fishery; require through regulation provisions to measure bycatch and associated mortality; develop regulations such as seasonal, time, and area closures, gear modifications, and others to reduce bycatch and associated mortality; specify the best available technology that reduces bycatch; and evaluate the bycatch of all new gear types and methods before they can be allowed in the fishery.

· §304(d) ESTABLISHMENT OF FEES (amended)

The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to sections 303 and 304 as so redesignated. The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. [The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.]

· § 304(new) BYCATCH RESEARCH (new provision)

(i) The Secretary shall establish, in cooperation with industry, a program for the elimination of bycatch through fees and incentive programs. Such fees collected through bycatch programs shall be made available to the appropriate Councils to be used exclusively for bycatch related management activities, including but not limited to costs of observer programs and cooperative efforts with the government on research and development of selective fishing gear and other technological devices for the reduction of bycatch.



**The
Marine
Fish
Conservation
Network**

"...To Protect, Restore, and Conserve Marine Fisheries."

*Proposed Amendments to the
Magnuson Fishery Conservation and Management Act of 1976*

**Objective - PROVIDE ADEQUATE FUNDING
FOR FISHERIES RESEARCH, MANAGEMENT, AND ENFORCEMENT**

The Marine Fish Conservation Network urges Congress to amend the Magnuson Act to permit fishery managers to collect user fees in order to recover the costs of fisheries management. We further recommend that compensatory revenues be deposited in a trust fund dedicated to supporting research, management, enforcement, monitoring and other fundamental fisheries programs.

Summary of the Problem

The status of more than a third of the species under Magnuson Act jurisdiction is unknown due to lack of funding for basic fish species or population assessment research. Even where general population trends are known, the data are often imprecise. This imprecision in assessing fish abundance undermines the ability of managers to respond to overfishing in a timely and effective manner.

There are critical gaps in fishery catch statistics, both in terms of the amount of information collected and the adequacy of the collection systems. These gaps deny managers essential information on the current levels of harvest, both commercial and recreational, fish discarded at sea as well as fish landed. As managers consider quota-based and limited entry management programs, the need for more accurate and precise information becomes acute.

These research and information shortfalls are largely the result of chronic underfunding. So is the poor state of habitat and ecosystem-based studies. Research is needed to better understand predator/prey interactions and their ecological needs, as well as to assess the effects of altering the physical and chemical environment on fish behavior, growth, feeding and reproduction.

Essential research in these and other areas has been held up by years of inadequate funding. Funding for management-related scientific research and data collection should be increased, along with funding for monitoring and enforcement. When the Magnuson Act was passed in 1976, the annual National Marine Fisheries Service enforcement budget was approximately \$7 million. The 1993 appropriation of \$11 million for enforcement and monitoring

illustrates that recent budget allocations have been inadequate to keep up with inflation and the additional enforcement burden resulting from 20 years of fishery management plan development.

To the extent that new appropriations are not available or forthcoming in sufficient amounts, the users of marine resources will have to contribute to the costs of improving fish species or population assessments and research, data collection and analysis, monitoring and enforcement, with emphasis on at-sea observer programs.

Currently, fishers pay no fees to the federal government to exploit publicly-owned resources. In this, they are unique among the users of public natural resources. In fact, the Magnuson Act limits the collection of fees to the cost of issuing and administering fishing permits [§304(d)], thereby preventing the owners of the resource, the public, from recouping the costs of management from those who are the primary beneficiaries, the fishers. An equitable fee system, on the other hand, would provide a more adequate funding base for NMFS and the Fishery Management Councils to fulfill their management duties.

Needed Action

The Marine Fish Conservation Network recommends that Congress develop new and innovative sources of funding to meet the increasing needs of fisheries management. The Magnuson Act should be amended to:

- allow Fishery Management Councils to implement a system of user fees and/or excise taxes on landed value of fish in order to support research, management and enforcement activities; and
- establish a protected fund for receipt of fees and other revenues which would (a) be in addition to and not in lieu of base funding currently provided for fisheries management programs, and (b) be allocated in such a way as to fairly and equitably benefit the fisheries from which they were received.

Objective - PROVIDE ADEQUATE FUNDING
FOR FISHERIES RESEARCH, MANAGEMENT, AND ENFORCEMENT

Amendments Suggested by the Marine Fish Conservation Network:

· §304(d) ESTABLISHMENT OF FEES (amended)

The Secretary shall by regulation establish the level of any fees which are authorized to be charged pursuant to sections 303(renumbered) and 304(new). The Secretary may enter into a cooperative agreement with the States concerned under which the States administer the permit system and the agreement may provide that all or part of the fees collected under the system shall accrue to the States. [The level of fees charged under this subsection shall not exceed the administrative costs incurred in issuing the permits.]



The Marine Fish Conservation Network

"...To Protect, Restore, and Conserve Marine Fisheries."

Proposed Amendments to the Magnuson Fishery Conservation and Management Act of 1976

Objective - PROTECT MARINE FISH HABITATS

The Marine Fish Conservation Network urges Congress to strengthen the habitat protection provisions of the Magnuson Act. Realizing that protection of habitat is probably the cheapest investment the Nation can make to sustain productive fisheries, the law should require that marine fish habitat protection be elevated to the highest level within NMFS and the law be amended to require that other Federal agencies respond to habitat concerns raised by the Fishery Management Councils. Most importantly, the Magnuson Act should be amended to give the Secretary of Commerce authority to insist that all Federal actions affecting important fish habitat be subject to review by the Secretary to determine their consistency with the objectives of fishery management plans written under the Act.

Summary of the Problem

For marine fishes, including anadromous species, critical habitat extends from upland streams to the continental shelf and beyond. Fish depend on coastal rivers, bays, salt marshes, mangrove swamps, seagrass meadows, offshore reefs, hardbottom areas, and other types of marine habitat for migratory paths and critical breeding, nursery, and feeding grounds. But these habitats continue to be degraded and destroyed by humans, largely stemming from population pressures in our coastal zone. Physical alterations, water diversions, containment discharges, nutrient over-enrichment, and other sources of point and nonpoint discharges, as well as other factors are degrading and destroying critical fish habitat on a daily basis. Already, more than 50% of our Nation's coastal wetlands have been destroyed. This degradation and loss of habitat could well become the greatest long-term threat to the future viability of marine fisheries. Much of this problem is largely the direct result of thousands of land use and water policy decisions made by Federal, state, and local governments.

Efforts to manage and conserve fish must encompass measures to manage and conserve their habitat. Yet, for the most part, our current fishery management laws and institutions manage fish in isolation from their habitat. The Magnuson Act, as do the numerous other federal environmental statutes that ostensibly promote coastal protection, only authorizes fishery managers to comment on potentially damaging activities and, to the extent they may recommend modifications, they are merely advisory. The National Marine Fisheries Service, in particular, has no veto authority over decisions on proposed projects, policies, or programs that would damage

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habitat and limit fish population sizes. 1990 Amendments to the Act inadequately address this problem of lack of control over the decisions of other agencies that significantly effect fish habitat.

In sum, although NMFS is the Federal government's primary advocate for conserving the habitat of marine fish, responsible fishery managers have no authority to command attention to their concerns; their voice is no more forceful than that of any citizen group whose demands on government policy compete directly with the habitat needs of marine fisheries. And without enough quality habitat to support populations of fish all other management and conservation considerations will be irrelevant.

Needed Action

The Marine Fish Conservation Network believes the habitat provisions of the Magnuson Act should be strengthened to enhance the role of fishery managers in the conservation of habitat critical to the conservation and management of marine fisheries under their jurisdiction. Congress should amend the Act to:

- adopt an aggressive national fishery habitat protection program, including development of a strategic plan for this program in order to guide both national and regional operations;
- provide NMFS with the authority to require that all federal actions be consistent with objectives of approved fishery management plans;
- mandate that NMFS implement policy to protect and restore critical fish habitat in coordination with regional management councils and other federal agencies, including EPA, Army Corps of Engineers, and US Fish and Wildlife Service;
- develop a research program with respect to fishery-related habitat values;
- increase the consultative role of the Regional Fishery Management Councils in habitat protection by requiring a written response to Council habitat concerns for all fisheries under their jurisdiction, not just anadromous species;
- require that councils consider the effects of fishing practices not only on fish habitat, but also on habitat of other marine species; and
- provide for adequate funding and staffing to carry out this national fishery habitat protection program.

Objective - PROTECT MARINE FISH HABITATS

Amendments Suggested by the Marine Fish Conservation Network:• **Sec. 2. FINDINGS, PURPOSES, AND POLICY** (amended)(a) **FINDINGS.** -

(2) As a consequence of increased fishing pressure, degradation of fish habitat, and inadequate fishery conservation management and practices [and because of the inadequacy of fishery conservation and management practices and controls] (A) certain [stocks of such fish have been overfished] fish populations have been depleted to the point where their survival and the sustainability of the fisheries is threatened, [and] (B) other [such stocks] fish populations have been so substantially reduced [in number] that they could become similarly threatened[.] , and (C) direct and indirect habitat losses have resulted in diminished capacity to support existing fishing levels.

(6) A national program for the conservation and management of the fishery resources of the United States is necessary to prevent overfishing, to rebuild overfished stocks, to insure conservation, to ensure long-term protection for habitats essential to marine and estuarine fish populations, and to realize the full potential of the Nation's fishery resources.

(9) (new subsection)

Continuing loss and degradation of riverine, wetland, estuarine, and marine habitats threaten to destroy fish populations and associated fisheries, and will render all fishery management and conservation activities ineffective. Habitat protection and restoration must become a principal focus of fishery conservation and management.

(c) **POLICY** - (new paragraph)

(7) to ensure to the maximum extent practicable that all state and federal actions are consistent with the conservation and management goals of this Act.

• **Sec. 302(l). FISHERY HABITAT CONCERNS** (amended)

(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from a Council, a Federal agency shall provide a detailed response, in writing, to the Council regarding the matter. [In the case of a comment or recommendation under paragraph (1)(B).] The response shall include a description of measures being considered by the agency for avoiding, mitigating or offsetting the impact of the action on such habitat. In the case of a response or decision that is inconsistent with the Council's recommendations under paragraph (1)(A), the federal agency shall explain its reasons for not adopting specific recommendations and how its actions are consistent with the goals of this Act.

(3) If after receipt of a response a Council does not find that the proposed federal action is consistent with the goals of this Act, the Council may request that the Secretary of

Commerce to initiate consultation with the agency proposing such action to modify the proposal.

• **Sec. 303. CONTENTS OF FISHERY MANAGEMENT PLANS** (amended)

(a) **REQUIRED PROVISIONS**

(7) include [readily available] information regarding the significance of habitat to the fishery and assessment as to the effects which changes to that habitat may have upon the fishery, including the effects of fishing gear and practices on the habitat of the fishery or other fisheries under the Council's jurisdiction.

(new paragraph)

(15) contain conservation and management measures to minimize or eliminate the adverse impacts of fishing gear and practices on habitat for fish.

• **Sec. 304(-). FISHERY HABITAT**

(i) FISHERY HABITAT CONCERNS--

(1) The Secretary may comment on any action undertaken, or proposed to be undertaken, by any Federal agency that, in the view of the Secretary, may affect the habitat of a fishery resource. Such comments shall contain recommendations for avoiding, mitigating, or offsetting the impact of the action on such habitat. Upon the request of a Fishery Management Council that has received an unsatisfactory response on a proposed action pursuant to §302(i)(3), the Secretary shall initiate consultation with the proposing agency to modify such proposal in accordance with the Secretary's or the Council's recommendations.

(2) Within 45 days after receiving a comment or recommendation under paragraph (1) from the Secretary, a Federal agency shall provide a detailed response, in writing, to the Secretary regarding the matter. The response shall include:

(A) a description of measures being considered by the agency for avoiding the adverse impact on fish habitat, and to the extent the impact cannot be avoided, for mitigating or offsetting the impact of the action on such habitat; and

(B) a list of those recommendations not adopted or addressed including the reasons for not adopting such recommendations and an explanation of how such action is consistent with the goals of this Act.

The agency proposing the action shall attempt to resolve any inconsistencies between the Secretary's recommendations and its own recommendations or actions.

(3) The Secretary, after consultation with the appropriate Council(s) and the Federal agencies involved, and after notice and opportunity for public hearing, shall have the authority to modify, restrict, or prohibit all Federal actions which are likely to:

(A) alter, degrade, or destroy habitat essential to a fishery resource under the jurisdiction of this Act; or

(B) adversely modify the habitat of a fishery resource subject to a recovery plan pursuant to a determination under §304(c)(1)(D).

(4) The Secretary shall prepare an annual review of the cumulative impacts of Federal agency actions (including permitting and licensing) on fish habitat, including an assessment of specific ecosystems that are being threatened by such cumulative impacts, and such review shall be presented to Congress immediately following its completion. A summary of relevant information from such report shall be incorporated into subsequent comments and recommendations under paragraph (1).

(5) The Secretary, after consultation with the appropriate Council(s), shall undertake a review to identify riverine, wetlands, estuarine, and marine habitats in federal and state waters that are essential to maintaining the health and abundance of federal fishery resources, and shall provide such review to the Office of Coastal Resources Management.

(6) Each Federal agency shall, in consultation with the Secretary, undertake all reasonable measures to ensure that any action authorized, funded, or carried out by such agency is not likely to:

(A) alter, degrade, or destroy habitat essential to a fishery in a fishery management plan approved under §304; or

(B) adversely modify the habitat of a fishery resource subject to a recovery plan pursuant to a determination under §304(c)(1)(D).

SIU

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**Statement
Of the Seafarers International Union of North America
On
The Magnuson Fishery Conservation
And Management Act of 1976**

**Submitted to
The Honorable Representative Thomas J. Manton .
Chairman**

**House Subcommittee on Fisheries Management
Of the House Merchant Marine and Fisheries Committee**

**U.S. House of Representatives
Annex II, Room 513
Washington, D.C. 20515**

July 29, 1994

The Seafarers International union of North America (SIU) would like to thank the Honorable Chairman Thomas Manton of the House Fishery Management Subcommittee and all its members for this opportunity to extend its previous testimony of April 21, 1993 on the Magnuson Fishery Conservation and Management Act. The purpose of this supplemental testimony is to present the views of the smaller and family operators involved in the fishing industry on the issues of so-called user fees and "individual transferable quotas" (ITQs), also known as "individual fishery quotas."

Further, the SIU would also like to readdress a few issues of pressing concern which have emerged in the intervening time since the union presented its testimony. One such matter relates to calls raised by certain groups to add "risk-adverse" management to the National Standards of the Magnuson Act, and to argue for adding expedited judicial review and the power to seek injunctive relief to the Act. Finally, the union would simply like to underline its concerns for the survival of the small and family fishermen and to urge Congress to strengthen habitat protections within the Act.

I. NO TO INDIVIDUAL TRANSFERABLE OR FISHERY QUOTAS

This is a critical matter to the survival of the family and small fishing operation. These "market" devices virtually guarantee the elimination of small fishing operations over the long run. Allowing sales of permits and licenses by private individuals not only robs the public treasury from much needed funds, but it also is harmful to the future of the marine ecosystem and sustainable fisheries. It encourages people with no ties to the sea, such as investors and bankers, to enter the industry not to derive income from the harvesting of fish, but rather to derive income by speculating on a market of limited permits.

Of course, once investors possess these permits, they expect their fishing operations to produce profits. This means getting as much of the resource as possible, while cutting labor and increasing the deadly efficiency of the operation, sacrificing safety at sea and conservation programs in the process. As allocations are fixed in any given year, these types of programs lead profit maximizing firms to engage in environmentally destructive practices such as "high grading," that is the practice of throwing small, less valuable fish back into the sea dead in order to get the maximum value of the quota.

Another factor which the SIU believes Congress must consider when looking at ITQs as a management tool is the impossibility of enforcing guidelines limiting concentration of ownership. The value of the right to a certain amount of the total allowable catch is far higher to vertically integrated corporations than the price of fish at the dock. Corporate entities which use fishery resources in retail products or through restaurant chains look at the total mark-up of the product or sales of associated goods or meals.

Therefore, corporations have both a strong incentive to garner as much of the resource rights as they can and the capital resources to bid up the price of ITQs far beyond what a fisherman could profitably (or actually) afford to pay. The National Marine Fishery Service (NMFS) does not have the resources or the expertise to track through the myriad of front companies, purchase agreements and other financial tools commonly employed

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to hide actual ownership and control. The agency would need a fleet of Security and Exchange Commission lawyers to even begin the job, and even with that, it is highly unlikely that the NMFS would be able to detect consolidation of permits.

The difference in the tenor and tone between the second and third panels' testimony during the Fishery Management Subcommittee hearings on ITQs [February 9, 1994] was very revealing. The perceptions about ITQs among members of the second panel -- that comprised of individuals and entities affected by the Halibut/Sablefish IFQ program in the North Pacific -- was purely guided by whether or not they anticipated being a "winner" or "loser" under the current plan.

However, all on the second panel testified that they understood that an ITQ was not a "right," but merely a management tool like any other which could be changed in the future. They also expressed a willingness to abide by all regulations necessary to enforce the plan and to pay certain costs associated with it.

In contrast, the processors in the Atlantic surf clam/ocean quahog business on the third panel, who have already experienced the ITQ system first hand, testified that indeed the government *must* instill the owners of the ITQs with full property rights. It should be noted that these processors are the big winners under the ITQ Atlantic surf clam and ocean quahog plan as they control a majority of the permits. The processors have built a politically strong coalition to fight any new entrants. They also find the most basic tenants of the enforcement system, e.g. logbooks and the "call-in" system, to be burdensome and untenable.

This illustrates better than any economic theory the real-world effects of the system. One needs only look at the convoluted arrangements laid out in the testimony of the self-styled "Surf Clam and Ocean Quahog Ad-hoc Committee" to see the problems which will arise if ITQs become a wide-spread management tool. They testified that quota owners leased their allocation to processors who, in turn, contract with vessels to harvest that quota.

Such arrangements negate the rationale and effectiveness of enforcing management measures through permit sanctions. Permit owners -- including banks and other financial institutions -- claim that they have no control over the violators, i.e., captains and crews hired to fish the quota. On the other side of the coin, if the permit owner faces no penalties then the actual harvesters, who are no more than employees of the permit holders, can be directed to violate quotas and other restrictions under threats of being fired and "blacklisted." Already clam boats and their crews have been lost at sea fishing in conditions under which the autonomous owner/operator would not have sailed.

Under this ITQ plan, any sensible link between ownership and harvesting has totally

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disappeared, along with more than half of the original fleet. Currently, it is estimated that nearly the entire allocation is controlled by no more than four entities, led by Borden Foods and the Westminster Bank of New Jersey. Consumers can suffer only under such oligopolies and monopolies.

Entities which are financially capable capturing large shares of the fishing rights wind up controlling large market segments, thus influencing both the prices they pay to have the resource harvested and, to some degree, the price they charge for the product. Under ITQ schemes they are the sole winners, while crewmembers lose out from reduced income and employment opportunities and consumers, ultimately, face higher prices. The promise of ITQs was the sole determining factor which led to Tyson, Inc.'s purchase of Arctic Alaska -- the owner of the nation's single largest factory trawler fleet.

The evidence from the Atlantic surf clam/ocean quahog ITQ plan and preliminary information available on the Pacific indicates that ITQs create conditions which violate the spirit and intent of the Magnuson Act. The mere promise of ITQ plans create perverse incentives which keep people who might otherwise exit this industry out at sea and fishing hard. They continue to fish in order to build that "track record" in the hope that they will reap a tremendous windfall in terms of a saleable quota. Such practices hurt conservation both now and in the long-run. It is in the best interests of this nation to allow for a natural exiting from the industry and to maintain in the industry those persons whose future is tied to the resource, as they are the ones who will be the best stewards of our fisheries.

ITQs are detrimental to employment in the industry, as well as future conservation efforts. The goal of maintaining small operations virtually eliminates saleable quotas as an alternative. The SIU believes that Congress should impose a moratorium on any new ITQ plans pending a study by the General Accounting Office, or any other qualified body, of the effects of the Atlantic Surf Clam plan, the limited entry schemes in the North Pacific, and the new Halibut/Sablefish regime. This nation deserves an impartial examination of the consequences ensuing from these measures.

As stewards of the public's interests, Congress needs this information to make wise public policy decisions concerning the nation's fisheries and the people who earn their livelihoods harvesting these resources. The SIU is confident that such an impartial review will demonstrate the frivolity of freely giving away these public resources. The SIU also strongly advises against creating incentives for Councils to institute ITQ plans by allowing them to charge "winners" under these schemes.

II. USER FEES, IF MANDATED, MUST EFFECT INDUSTRY AS A WHOLE

Inextricably linked with the issue of Individual Transferrable Quotas is the matter of user fees. During the ITQ hearings the issue was raised time and again to help offset the vast costs of instituting such systems. While the notion that fishermen are unduly profiting from a free, public resource is superficially attractive, it incorrectly assumes that commercial harvesters of fishery resources are the only entities so "profiting."

In point of fact, government regulations in terms of mandated expenditures needed to comply with management measures (e.g., larger mesh nets, new dredges and vessel tracking devices, known as VTSs) which by definition reduce income from fishing, regulations stemming from the Commercial Fishing Vessel Safety Act of 1988 (e.g., life rafts, EPIRBs, vessel overhauls, fire-fighting equipment, etc), permit fees and hull, liability and medical insurance all have combined to reduce profits from harvesting to near zero. Adding what is essentially a tax to that list of accounts payable to fishermen is a move that will drive many small fishing ventures into bankruptcy. That aside, it is incumbent upon Congress to look at fishing as an entire industry if it decides that user fees are appropriate and necessary.

The SIU recommends that any such fee should also be assessed on the recreational side of the industry. The charter and party boat operators, who operate under in a far less restrictive regulatory environment, also directly benefit financially from these resources. Another group which gains substantially from the commercial and recreational sectors, are equipment providers and boat builders. One particularly egregious example is the windfall profits which accrued to the manufacturers of VTS systems from implementation of the New England groundfish and scallop FMPs.

On shore, the commercial sector also supports the entire chain of economic activity dependent upon the "free, public" resource they harvest. Processors, dealers, transport workers, wholesale and retail enterprises and restaurants also profit. Any meaningful user fee structure should be fairly distributed on all beneficiaries, not solely on commercial harvesters.

Another factor which the SIU believes is important for Congress to consider is that any such tax which falls solely on the domestic production of fish will serve to make U.S. fishery products less competitive relative to imports, thereby increasing demand for foreign fish. Even if this tax is laid solely on harvesters, prices will rise either because they can pass this cost on or, more likely, the additional financial burden will drive more and more small operators from the business and consolidation within the industry will lead to the same result.

This bolsters the argument that the entire industry should share this burden. If some type

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of sales tax, modeled on "value-added" tax schemes, were instituted not only would the system generate more funds for the fisheries management system, but it could be equally applied to foreign and domestic products. This is justifiable because over-fishing is not solely an U.S. concern, but rather a global problem.

Conservation is not served by simply pursuing policies which merely increase imports. A rational, incremental tax levied at each link in the economic chain of the industry will prevent American consumers from unwittingly subsidizing ecologically unsound fishing practices in other parts of the world. The SIU believes that since this type of sales tax plan treats all goods in the same manner, it would not run afoul of any of this nation's trade agreements. If user fees are deemed a necessity, fairness and justice demands equal and shared sacrifice by all beneficiaries.

Such a tax plan would levy a very small percentage tax on the retail and wholesale purchase of marine equipment, charter and head boat excursions, recreational gear, fresh and frozen product, processed fish, and at retail outlets and restaurants. Given that much more complex value-added tax programs are successfully used throughout Europe, it seems that the such a system can be feasibly administered here in the U.S.

III. CURRENT MANAGEMENT IS ALREADY "RISK-ADVERSE"

In the intervening time since the SIU testified before the Subcommittee in April of 1993, the union has become more deeply embroiled in a lawsuit which the SIU, along with some fishermen's cooperatives and businesses in New Jersey, Virginia, North Carolina and Massachusetts, has filed against the NMFS and its parent agency, the Department of Commerce. Information obtained from the NMFS as part of the administrative record in this suit underscored many of the problems outlined in the SIU's previous testimony.

In brief, the suit challenges the 1993 quota imposed by the NMFS on the summer flounder (or "fluke") fishery under Amendment 2 to the Summer Flounder Fishery Management Plan (FMP). It charges that the Fisheries Service relied on outdated and inaccurate scientific information in setting the quota; that the agency ignored the input and information provided by the commercial fishing industry; that the summer flounder quota was unnecessarily duplicative as the gear restrictions were sufficient to insure the survival of juvenile fluke which would increase their spawning stock biomass; and that one time ecological dislocations (i.e., massive "fish kills") in the 1988/89 period were primarily responsible for the low survey indices and commercial and recreational landings.

The rationale for raising this issue here, however, is not to argue about the wisdom, or lack thereof, of Amendment 2 to the summer flounder FMP, but to point to some real-life examples of problems associated with current administration of the Magnuson Act.

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Some environmental and recreational fishing groups have testified before the Subcommittee that so-called "risk-adverse" management techniques should be mandated under the National Standards of the Magnuson Act. The SIU strongly believes that this would only lead the Councils, NMFS and, in particular, their scientific staffs to further over-manage species while ignoring optimal yield and the social and economic consequences of fishery management plans. Direct experience has shown (see Attachment I, *Commercial Fisheries News* article) that many of these scientists and biologists either have strong anti-commercial biases or do not understand the industry.

Using the summer flounder plan as an example, the Councils are in fact already managing not by the National Standards, but rather using a "risk-adverse" standard. Attachment II to this testimony is copies of pages of a transcript from the September 1, 1993 Summer Flounder Monitoring Committee (SFMC) meeting at which the decision to set the 1994 fluke quota was made. The SFMC is comprised of Councilmembers, scientific staff, state officials and members of the Atlantic States Marine Fisheries Commission.

Under the summer flounder plan, the SFMC is charged with considering the scientific data, setting the quota level and making its recommendation to the Councils. Dr. Chris Moore, a NMFS scientist, recommended to the SFMC that it accept a quota level based on a "double-conservative" estimate of the population. In arguing for this level of quota, Dr. Moore said, "the staff believes that the implementation of the lower quota is a risk-adverse strategy that will benefit both the resource and the fishermen." [p. 15, emphasis added]

Dr. Moore's arguments do not meet Magnuson Act criteria for such decisions. Nor are they justified by the current state of the summer flounder fishery which has made a spectacular recovery since its recent nadir in 1988/89. In fact, as was pointed out by Dr. Wendy Gabriel of the Northeast Fishery Science Center, there has been a tremendous increase in the of fluke population, "[A]ll these fish we are seeing in 1993," she said, "has been proven by recruitment in 1991 and 1992" before Amendment 2 quotas and mesh restrictions were in place. [p. 2].

In other words, the fishery rebounded not due to the efforts of any federal management plan, but due to the ability of the fish to increase spawning efforts to avoid collapse. It is important to point out that the main problem with the fishery was not over-fishing, but a series of unusual environmental dislocations in the late 1980s which affected a couple of "year classes" (i.e., the young and larval fish).

The fishermen testified during the public hearing process about the strong recovery of summer flounder even while the scientists were predicting utter collapse. The input from

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the industry, which was dismissed as "anecdotal," has proven to be right on target. One reason that the scientific community missed the recovery while it was happening is because they are forced to deal with antiquated data, while the fishermen are out on the fishing grounds every day.

Fishermen have long complained that NMFS staff and scientist dismiss their input as "anecdotal" and unworthy of serious consideration. A document recently obtained discovery during the summer flounder lawsuit indicates that the fishermen have reason to be suspicious of the attitudes of NMFS staff and scientists. A letter from a representative of commercial fishermen outlining the industry's views on certain proposals drafted by the NMFS is "annotated" by comments of a NMFS staff person. This person's tone is elitist and frighteningly condescending. The NMFS representative brands the fishermen's comments as "bull ____" and "drivel." (See Attachment III).

The data which fishermen provided in the summer flounder FMP hearing process was never considered, and, in fact, ignored for two straight quota setting exercises, one for 1993 and one for 1994. In 1994, unfortunately, despite the obvious discomfort some councilmembers felt about using the risk-adverse criteria¹ opposed by fishermen, they none-the-less believed it was necessary to adopt the staff recommendations. This action will exacerbate the severe economic consequences caused by the even lower 1993 quota, and is not justified by the "best available science," the proper Magnuson Act standard. Not only was the 1994 stock projection calculated using estimates for age 0 fluke which were one standard error below the best estimates, but that estimate was itself reduced by one standard error, with no scientific justification offered for this methodology.

The committee also used conservative and unusual averaging techniques (a geometric mean, which yields a lower number than an arithmetic mean) to predict the number of age 0 fluke in 1994, which heavily weighted the outlying bad year of 1989 and negated the clear upward trend of the following four years. The projection also incorporated the assumption that 100 percent of discarded fluke die, even though they were aware of a Massachusetts study which found 94 percent *survival* of discarded summer flounder.

If Congress feels uncomfortable challenging the validity of the fishery scientists work, they are not alone. As the summer flounder quota experience demonstrates, members of the regional councils similarly feel unqualified in challenging staff recommendations, and resultingly they tend to act as rubber-stamps. Given that there exist proven failures to act, such as in the New England groundfish fishery, the Councils are beginning to swing

¹ In this regard, Mr. Bruce Hलगren, New Jersey Division of Marine Resources and SFMC member, said: "In all places we tell the fishermen, all our plans, [sic] that it is based on the best available data. I don't think we are basing it on the best available data when we take the most conservative point of view."

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towards the over-management fisheries based on advice of staff.

In the case of certain fisheries, like the Atlantic summer flounder, the Gulf red snapper and red grouper and the Pacific coastal pelagic species, this tendency is causing tremendous economic dislocation with no biological justification. In these cases, management successes and biological recoveries are not leading to increased opportunities to fish. The SIU went over the entire record of the summer flounder plan, and has discovered an almost intentional pattern of overstatement by NMFS staff members regarding the "crises" in the fishery.

To cover every instance would take dozens of pages, so instead, the SIU will summarize its findings and offer to provide the union's more detailed data should it be requested by any member of Congress.

Most significant is the distortion of information as it moves up the ladder from draft material circulated only among staff to the Councils and then to the public. For example, the biological section of Amendment 2 was trimmed by more than five pages from its original draft. Most of the information excised from the original either ran counter to staff contention's that significant overfishing had been occurring in the mid- to late-1980s or that referenced the strong reproductive potential of fluke (e.g., the line: "The reproductive strategy of summer flounder tends to maximize reproductive potential and avoid catastrophe." was cut from the public draft).

Further, many charts and tables which appeared in the original were cut from the copies available to the councils and the public. In particular, one table that was removed demonstrated that the actual nadir in the fishery, as demonstrated by state surveys, occurred between 1968 and 1972, after which the fishery reached record high levels of abundance in the mid-1970s. In both the public documents and public statements, staff indicated that 1988 was, in fact, the worst year on record even though fluke abundance was more than three times higher than in 1970. The draft table was replaced by one which starts in 1976, the second highest year, one year prior to the highest survey level recorded.

This is consistent with the pattern the SIU discovered of staff putting the situation in the worst possible light. By not showing the actual lowest years, NMFS staff members were able to make the case that the state of the fishery in 1988/89 was a) unprecedented and b) was the result of a long slide from the peak of the mid-1970s (instead of, as the data suggests, part of a fairly regular 10-year cycle).

Numbers, such as fishing mortality rates, also take on independent lives far outside of the reality of the fishery. During the Amendment 2 development process the suggestion that

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fishing mortality rates were "1.4 and possibly as high as 2.1"² became almost a mantra long after these numbers were no longer current. This range was given as late as August, 1992 by Dr. Chris Moore in a memo to the Mid-Atlantic Council, even though he then knew that the best estimate (indeed the one employed by Dr. Gabriel when she estimated the fluke population in order to set the 1993 quota) was 1.07. The difference is not small as this rate increases geometrically.

The reason the SIU elaborating on this process is because these numbers are constantly used by the staff and Councils at public hearings and other fora to refute testimony from fishermen. The SIU also believes that staff freely uses these dated numbers and "risk-adverse" analysis to push the Councils towards their own, pre-conceived notions of conservation. This is not in the spirit or intent of the Magnuson Act.

IV. JUDICIAL REFORM IN THE MAGNUSON ACT

The Magnuson Act must to be amended to offer quicker remedies in cases such as the summer flounder plan where people's livelihoods are seriously impacted by flawed management plans. The democratic right to seek redress from arbitrary exercise of governmental authority is seriously inhibited by the inability of persons seeking to challenge the NMFS to obtain expedited review and injunctive relief.

For example, although the Plaintiffs in the SIU's fluke lawsuit were lucky in getting relatively quick court dates at the beginning of the suit, the process slowed up considerably. The plaintiffs August 3, 1993 request to make oral argument was not ruled upon until November 5, and the hearing was set for December 14 for a quota which was to end December 31. Simply due to the realities facing federal judges, the fishermen of the East Coast were denied a ruling on their petition for redress -- the judge dismissed the case as moot -- simply because the court could not fit the case into its already overloaded schedule in a timely manner.

The Magnuson Act does not afford federal courts the authority to issue injunctive relief to delay implementation of part or all of a plan or amendment, pending final judicial resolution. Nor does the Act provide for expedited judicial consideration of such a challenge. With crowded federal court dockets nation-wide, those challenging plans or amendments under the Act have little if any opportunity for timely and effective relief. And while the courts act on their own time-table, fishermen are forced to bear the economic costs from this delay.

² If these numbers ever did accurately reflect real fishing mortality, then the latest year they could have held true for was 1989.

V. FAMILY AND SMALL FISHING OPERATIONS:

It should be made a goal of the Magnuson Act, under section 301, "National standards for fishery conservation and management", that any fishery management plan should be enacted in such a way as to preserve and protect the family and small fishing operations characteristic to a given area or fishery. Family and small operations should be broadly defined to include those operations where ownership of a vessel is closely linked to the vessel both geographically and as a major source of income.

A "small" operation, of course, depends on the type of fishery and location that a boat is fishing. The main characteristic worthy of preserving is a close bond between the owners/operators and the sea. In many cases, historical development of the fishery will provide clear guidance in this matter.

This language should replace Sec. 301(A)(5); U.S.C. 1851(A)(5) which deals exclusively with economic efficiency. While economic efficiency is a worthy goal, this part may be interpreted as giving priority to methods which quickly deplete resources while also providing lower levels of overall employment (essentially the definition of economic efficiency).

Small operations create more overall employment and also have a conservation aspect built in precisely because smaller operations cannot deplete the resource as quickly. As stated above, where the operators are deeply connected with the resource they will tend to be better stewards of it.

Some have argued that the Councils cannot and should not be in the business of any such "social engineering" or of deciding "winners" and "losers" under their plans. The fact is, that every time a given Council develops an FMP, it either consciously or unconsciously makes just such choices. To say otherwise is an exercise in extreme self-denial.

Through the hearings process, time and time again, fishermen explain the effects past and future management schemes have had or will have. Any member of Congress can attend these hearings and hear absolutely heart-breaking stories of loss and despair. And, in nearly every instance, these fishermen are those that are engaged in small-scale fishing operations and are barely clearing a middle-class existence.

In depleted fisheries, where everybody knows that sacrifice is needed for the future good of the industry and stocks, the question becomes how best to spread this sacrifice. One does not have to suppose ill-will on the part of fisheries managers to assert that they are indeed making a decision to eliminate the small-scale operators at the expense of more efficient, factory or large-fleet operators. It simply stems from the decision not to consciously decide this matter.

Therefore, it is incumbent upon Congress, if it deems that the case for the maintenance of this sector has merit, to instruct the Councils through the Magnuson Act to maintain the historic balance in the fisheries under their jurisdiction. It is not a matter of excluding the factory and large-fleet trawlers entirely, but of seeing that FMPs duly consider and set aside allocations for the smaller operators. This is not a unique proposition; currently in the North Pacific, the Council is wrestling with this very issue. The SIU believes that the debate, there termed as the "on-shore/off-shore" debate, should be carried out on a national scale.

IV. HABITAT

While the SIU recognizes overfishing as an important factor in the decline in fishery resources, we also believe that issues of habitat degradation have not been fully explored. Recent study at the Northeast Fisheries Science Center shows that water pollution directly contributes to the mortality of embryonic and young Atlantic mackerel, winter flounder and other species. [See Attachment IV.]

It is time for Congress to give Management Councils the tools they need to both protect habitat and to make those responsible for habitat degradation bear a share of the costs of rebuilding the stocks. Today, all those costs fall solely on the backs of the harvesters, perhaps because they are a politically disorganized and fractured group compared to large industries and because they are easier to identify and manage.

It is time for this to stop. Marine biologists are well aware of the problems caused by loss of wetlands by coastal developers; intake and discharge pipes; the problems of nutritional overload and toxic algae blooms which result from agricultural run-off and human sewage dumping; damage done by oil and chemical spills at sea and at transfer facilities; and from industrial toxins and heavy metals which are either dumped or washed into streams, bays and the ocean itself.

All of the above vitally effect the ocean's productivity and hurt the fragile ecosystems on which the United States relies. Even the loss of the earth's ozone layer is projected to have devastating effects on the most basic part of the ocean's food-chain, the plankton.

Congress needs to approach the Councils to find out what tools they need to help address this vital component of fisheries management. Further, it must give other relevant agencies the funding and tools they need to prevent this type of damage and to mitigate the effects of existing pollution and habitat damage. Finally, stiff fines and penalties need to be strictly enforced against those who harm the nation's marine resources and this money must be directed back into the fisheries to help further understanding of these effects and to financially aid fishermen harmed by habitat degradation.

CONCLUSION

The SIU would like to thank the Fishery Management Subcommittee and the Honorable Chairman Manton for this opportunity to extend its remarks. In addition to our previous testimony, the union would like to urge the Congress to institute a moratorium on ITQ programs and initiate a study on the effects of current ITQ and limited entry plans. The SIU further urges consideration of the funding plan presented on pages four and five as the most fair to all beneficiaries. It is also the hope of this union that this Subcommittee will not give in to pressure to amend the Act to include a "risk-adverse" standard. Such language would only serve to further undermine the already scant attention fisheries managers pay to the social and economic aspects of this nation's fisheries while doing nothing to enhance stewardship of the resource. These goals may well be fostered in a much more beneficial way should Congress seek to bolster traditional fisheries and allow the NMFS and the Councils to enforce habitat degradation and restoration more effectively. The Seafarers would be happy to provide Congress with any further details on the issues laid out herein.

ATTACHMENT I:

**Commercial Fisheries News article,
"The undermining of commercial fishing"**

The undermining of commercial fishing

Today's public misperceptions shape tomorrow's scientists

Commercial fishermen have a serious public relations problem. We yack about it all the time — on the dock, over drinks, in meeting rooms, on the radio. Every time a damaging 30-second sound bite airs on television, or a major daily newspaper runs a distorted story about the "waste" and "slaughter" caused by commercial fisheries, we are outraged.

PERSPECTIVE

by Janice M. Pianta

We blame the press and environmental groups for accusing the public with sensational garbage. We counterargue, say something must be done, and then, for the most part, go about our business.

This relentless negative imagery has done the commercial fishing industry unmeasurable harm. The campaigns to save the whales, porpoise, and bluefin tuna have worked. The vast majority of people in our society have no understanding of the terms "waste" or "sustainable yield."

Over the years, CFN has monitored the shift in attitude of the general public, not only the movement away from conservation and toward total protectionism of living marine resources, but also the growing misperception of the commercial fishing industry. I thought we knew what we were up against, but I was wrong. We have greatly underestimated the magnitude of the problem.

Late in July, I spent 36 hours with a group of college-age marine biology students at the Shoals Marine Laboratory on Appledore Island off the coast of Rye, NH. My charge was to listen to their



A breaching humpback whale.

presentations on commercial fishing, and then participate in a round table discussion answering questions and bating about issues.

It was a sobering experience. The presentations were a cold slap in the face in the fishing industry. Commercial

fishermen didn't have a prayer in the bluefin tuna commentary. On the New England groundfish front, students made it clear that when it came to stock rebuilding, fishermen "just don't get it."

Although the class was given a year of Commercial Fisheries News issues to

gather information for the presentations, they headed to the island library, dug through the shelves, and gravitated toward magazines like Audubon. The results were uncanny. It was Audubon's facts and figures they cited as background on the bycatch issue. It was Carl Safina's words

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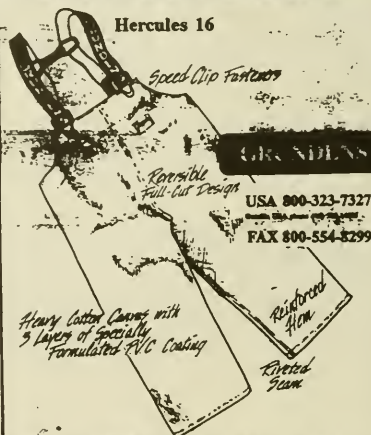
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they used to gain a perspective on bluefin crabs. Their trust was not in *Commercial Fisheries News*, the trade paper of record for the Northeast commercial fishing industry.

The Shoals Marine Lab is near and dear to my heart. Twelve years ago, I too was a student at the lab — and took the name Marine Vertebrates class I was now observing. But times have changed between then and now, and I saw that the gulf of a dozen years was wider than I ever fathomed.

In 1981, my class also consisted of college-age aspiring marine biologists. But we viewed things differently. We believed in science. We were fascinated by marine mammals (as yes, watching humpback whales feed and breach was probably the most awesome experience we had), but we were intrigued by everything — fish, marine birds, plankton, the natural cycle of life and death in the marine environment.

Also, our relationship with commercial fishermen back then was real. The fishermen of Portsmouth, NH were a part of our experience. They stopped by the island, let us walk on their boats to see their gear. They dropped off boxes of fish — a pain in the neck for them, really, to steam to the island and make an extra stop for a box or two. But they did it, and we remember it. We filleted those fish on the back stoop of the lab's big kitchen, and we got to know the feel of a fish under a knife.

So what went awry between my student days and these?

Maybe it boils down to this: When I went to Shoals, I went there with a blank slate, with no preconceived notions — except for the sense that the ocean was a seductive place, and I wanted to learn about it and somehow be a part of the community that works with it.

Today's college-age students are going to Shoals with attitudes already formed. By the time they graduate from high school today's young people have already been long-bombarded with negative press and biased television footage of commercial fishing.

They have opened mailboxes stuffed with glossy colored photos of seals strangled in netting, whale carcasses, and decks littered with little dead fish. They have read shocking stories in environmental publications about the "destruction" caused by commercial fishermen. The word "overfishing" became part of their vocabulary. They were imprinted with fingers pointed at the people that "rape" the resource, those greedy commercial fishermen.

How do you fight that? How do you combat the sweeping power of well-funded environmental groups who play upon people's emotions? How do you contest a graphic and sensationalized 30-second sound bite that commercial fishing industry has had very few fishermen who have worked effectively on a national level to counter the tide. The National Fisheries Institute has done an admirable job of it, but all too often it's the only industry flag on a very crowded flagpole.

The industry is so busy struggling against immediate problems.

Amendment 5 of the groundfish plan, Amendment 4 of the scallop plan, an overhaul of lobster management, the fishery crisis, the threat of future reduction in the bluefin tuna quota. There seems to be little money or energy left at the end of these fights to deal with something so broad and vague as public perception, especially when any response generated by the fishing community seems to get torqued, misrepresented, misapplied.

What the industry must acknowledge now is that the students I met at Shoals are representative of students everywhere. They are this country's next generation of scientists, and they are not unbiased. They have defined, molded feelings about living marine resources — the kind that are difficult to change once they become established. They often confuse good science with value judgments. It has become difficult for many of them to view issues that deal with living organisms objectively.

This is bad for the fishing industry, but it's bad for science too. The line is blurring between the people who make the policy decisions and the people who do the professional work. We're supposed to trust scientists to tell us what the facts are, even if we don't like what the facts say. Then, it's up to policymakers to determine whether the factual information needs to be balanced by social or economic considerations for the good of society.

My experience at Shoals makes me fearful that the next tide of scientists won't ever have known the black-and-white nature of that line. There are fewer people to set standards for tomorrow's scientists — people who can teach the difference between facts vs. ethics, science vs. morals.

Even the American Fisheries Society, an organization of professional scientists for whom I had deep respect, has crossed the line. It has turned toward advocacy for bluefin tuna and other species and issues. For me, who was schooled by Carl Bond, one of the society's respected fishers, it has been distressing to conclude that I do not trust the society the way I used to.

We at *Commercial Fisheries News* are not sure of the full ramifications of all this, but we are asking the broader questions. We fear that this movement of protectionism, founded on emotionalism, is not good for society as a whole. Though we think the implications run deeper than fish, we know it boils it all for the commercial fishing industry.

We mistrust where the environmental movement will go next. We believe in healthy stocks, but we still believe in sustainable yield and wise use — not in the way those words were defined today, but as they were used when the Magnuson Act was first drafted. We are finding fewer and fewer people who can speak that language.

Janice M. Plante



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Richard Duffy Remembers ...

I remember back in 1971, being in Jarvis Newman's shop with my father, watching a hull being laid up. I turned to Dad and said, "You know, that doesn't look that hard." By '73, when the paper started, we'd put up a plastic building and had our first model — the 34. We built one hull that first year and went back fishing. The next year, we went in and built another one — seemed like within a few weeks, we had orders for 10.

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I think we've advertised in *Commercial Fisheries News* right from the first. If it wasn't for CFN, nobody would have heard of us! Back then, if you could get a picture of one of your boats in *Commercial Fisheries News*, it was like being on the front page of the *New York Times*. You knew the fishermen read it. And they still do.



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ATTACHMENT II:

**Pages from the minutes of the Summer Flounder
Monitoring Committee meeting,
September 1, 1993**

Summer Flounder Monitoring Committee Meeting
1 September 1993 Ramada Inn, Essington, PA
Condensed and Edited Transcript

The Summer Flounder Monitoring Committee meeting was called to order at 10:20 a.m.

Attendance included: Philip Haring, NEFMC; Roger Pugliese, SAFMC; Kathi Rodrigues, NMFS/NER; Hannah Goodale, NMFS/NER; Wendy Gabriel, NMFS/NEFSC; John Marriner, NMFS/SEFSC; Richard Christian, ASMFC; Richard Sisson, RI Fish, Wildlife & Estuarine Resources; Rick Monaghan, NC Div. of Marine Fisheries; David Pierce, Mass. Marine Fisheries; Bruce Halgren, NJ Div. of Marine Resources; Chester Zawacki, NY Div. of Marine Resources; Lee Anderson, MAFMC; and Alan Weiss, MAFMC. Staff attendance included: John Bryson, Chris Moore, and Judi Abbott, recording secretary.

Mr. Bryson: The task today is for the Monitoring Committee to review the summer flounder data. I am going to go through the charges for the committee, although I am sure that you don't need it, but I do want it on the record because we have had criticism in the past that it was kind of a rubber stamp deal.

Summer Flounder Monitoring Committee is to review the following data each year to determine allowable levels of fishing and other restrictions necessary to result in a fishing mortality of 0.53 in 1992 through 1994 and a fishing level of 0.23 in 1995 and thereafter. I think that level of mortality is something we need to keep in mind as we go into the quota process. The data we will review is commercial and recreational catch data, current estimates of fishing mortality, stock status, recent estimates of recruitment, virtual population analysis results, target mortality levels, impact of size/mesh regulations, impact of gear other than otter trawls on the mortality of summer flounder, and any other relevant information.

Based on this review, the Committee will recommend to the Demersal Species Committee of the Council the following measures to assure that the target mortality levels specified in paragraph (a) are not exceeded: commercial quota; the commercial quota will be set from a range of 0 to max allowed to achieve the fishing mortality specified in paragraph (a); the commercial minimum fish size; minimum mesh size; recreational possession limit; the recreational possession limit will be set from a range of 0 to 15 summer flounder to achieve the fishing mortality specified in paragraph (a); the recreational minimum fish size; recreational season; and restrictions on gear other than otter trawls.

The Demersal Committee will then review the recommendations of the Summer Flounder Monitoring Committee and any public comment, I guess, and make such recommendations on to the Council, and in turn will make its recommendations to the Regional Director.

I did have a couple of phone calls a day about participation from the public at this level. I advised them, that I thought it would be better to participate at the committee level. They were welcome to attend however. But this is not necessarily the place to have public input as to what they thought the quota should be. That would be better at the committee structure. We may have a few people that are interested that are not here. I would suggest that if we go through this, we keep in mind that the difference between the 0.53 fishing mortality level and the 0.23, and consider stability in time rather than move into a level and have to cut back approximately 26%. Keep those impacts in mind when you go over your recommendation. I think they are important to keep in mind. Unless there are any changes in the agenda, we will kick-off with Wendy on the status of stocks and quota calculations.

Dr. Gabriel: I will give you a quick overview for those of you who were not at the SARC or the SAW. The Summer Flounder Working Group met twice this year, once in the fall in October of last year, and once this spring. We updated the virtual population analysis and that was reviewed at the SAW this spring. I believe you have copies of the results. This is just some highlights from that. (See Attachment 1 - graphs). We have a brief summary of the results. This is the trends in the spawning stock biomass and the bars indicate the resulting recruitment. The year class here indicates the results

of spawning, so this would be fish recruiting at age 0 in January of 1992. This bar represents spawners in November of 1991. You can see an increase since the record low in 1990. They were driven primarily by increase in recruitment after the disastrous 1988 year class. Trends at this year show some decline relative to the high levels in the 1980's, in 1988 and 1989. Catches are stable here, and have been stable the last couple of years at around 10,000 mt. An overview of the stock recruitment plot shows that we have gotten, again these past couple of years in 1990 and 1992, a little bit better than a level that you would need to get a replacement in the spawning stock biomass recruitment.

One change we did make this year was to incorporate a survey data of VPA, and that led to a little bit more of uncertainty in some of our estimates. This is a distribution of the 1992 spawning stock biomass. It seems kind of flat, but the most likely estimate here is around 15,000 mt. A distribution of F as you noticed before, was around 1.0, but again, there is a probability that we have underestimated F here. It may be a little bit bigger than that. By getting a little better accuracy, or a little less bias by using the commercial CPUE, for instance, we have got a little bit more uncertainty in terms of what we have for stock size estimates.

In terms of numbers of age, here is a picture of the most recent trend. Here is the 1988 year class at age 0, at age one, and at age two. You can see the pretty crummy effect that has had on the situation, and the more recent higher levels of recruitment. The blank here for 1993 is missing for age 0 in this case. We estimated that using trends in recruitment indices and part of the problem in using those recruitment indices are that we have disparate trends between the two surveys that seemed to match with the VPA the best. The North Carolina index showed a fairly high level of recruitment in 1992. The VIMS index showed quite a low level, and this analysis ends up splitting the difference. So there is a little bit of uncertainty here also, depending on our age 0 input. So we ended up estimating from that analysis around 33 million fish which would put that peak right about there. So we are equal to these relatively large levels that we saw in 1991, but we are still a bit below the mean in the past five years. We are close to the mean when we put this 1988 value in here.

In terms of the longer time series (VPA), things looked relatively good, if we just look at the last eight years alone. However, back in the early 1980's we had much higher recruitment levels. We also had age 3 fish. We did see a few fish surviving to age 3 in spite of mortality rates. People may be saying that in fact the quotas are responsible for all of these fish that we are seeing in 1993. But in fact, it looks like it has been proven by recruitment in 1991 and 1992, so we can't let their regulations take all of the credit. We had a lot of help from mother nature.

We used a straight-forward age-based projection model this year instead of the length-based one. This is the standard operating procedure that we used in both of the assessments. The results are pretty robust. I have some comparison analyses for people who want to see the difference between the age-based and length-based methods. They come within 400 mt of each other. We used three different scenarios when we looked at projections. Here are the stock sized output from the VPA. We also looked at plus or minus one standard error around the recruitment estimate for age 0 and plus or minus one standard error at age one. What we ended up doing is using this estimate here as a base-line (there is our base-line estimate straight out of the VPA). Then we looked at what happened if we had age 0 and age 1, 1 standard error below which would be the worst case. And then age 0 and age 1 estimates, 1 standard error above where we thought we were. This gives us a rough boundary between the best case, meaning that we have excellent recruitment at age 0, and very good recruitment at age 1 as well versus 1 standard error below. So we have two "bad-year classes" and in this case, two good-year classes, and then the two that seemed the most likely under our present estimate of VPA. When we take out the landings which is affiliated with the quota this year, it corresponds to about 9,400 mt. We imply when we move this level of landings from the stock sizes associated with either this stock size, that stock size vector, or this stock size vector, we get different levels of F . So for example, if we took 9,400 mt out of our mid-range stock size, in fact, that corresponds to an F of .48. If we have the low option here, we would be looking at an F of around .52 this year. And if we have a lot of fish out there, the F would be around .46. So we have these

three options here in 1993. We are assuming that the landings in 1993 match exactly with no changes. The discard pattern here matches the discard pattern that we have seen before which is primarily a sized-based discard pattern. Most of the discards here are age 0, a few more age 1, and few at age 2, so this discard pattern here reflects the impact of a minimum size effect here. If in fact, during 1993, the discard pattern changes, and there is a large discard of bigger fish in trip limits, then this assumption obviously won't hold, and this will leave uncertainty in the output as well.

Mr. Haring: What is the assumed mortality rate on the discards?

Dr. Gabriel: On this model, the mortality rate is assumed to be 100%.

We take the resulting stock size in 1993, and moving these landings, and project that forward and we target F levels in 1994, from our low option and we end up with around 12,100 mt with our mid-range around 14,400 mt and under the most optimistic scenario around 17,000 mt. If we promulgate that ahead again to 1995, applying the same F level, we would be looking at landings at around 12,000 mt, 16,000 mt and 20,000 mt. So these provide an approximate range around the uncertainty.

We also did a little bit of an experimental approach. This was introduced at the SARC, and if people are interested in an explanation of this, I have something in a handout. It is in the process of being developed, so it may change as we refine the technique, but the way it works is to take the uncertainty estimates that we get out of the virtual population analysis from bootstrap procedure. What that gives us is 200 starting stock sizes in 1992 as a result. We take each one of those 200 possible stock sizes, and project them forward and we remove different levels of landings from them. So an analogy here for example, is that if we have low stock size and we take out that amount of landings, that is the F that we would end up realizing. Instead of just having these three options here, we have 200 of them that are generated in bootstrap procedure. What you are looking at is the distribution of F's that come out of that for different levels of landings.

In this case here, some of these preliminary results show that if we adopted a quota level of about 12,000 mt and 12,500 mt, we would have only a 20% probability of exceeding our target. Whereas, if we adopted a quota level of 14,500 mt, then there would be up to a 40% chance that we would be exceeding our target level. So it wouldn't be a sure thing that we hit our target on the nose with this 14.5 level that we had calculated here, just because of the uncertainty in the estimates that we have in the final year. So at 14.4, even though we input in this stochastic model, .53, this is the result that comes out. In fact, the distribution of the observations that we have by incorporating the error show that it is not 100% sure that we would meet our target.

Mr. Haring: Are the level of discards assumed to be the same for all of the quotas?

Dr. Gabriel: Yes. The rate of discard here is assumed to be the same. We use the same input values here, so we assume the same proportion landed at age under each one of those quota scenes. Because we really have no way of estimating how the discard patterns are going to change by the imposition of a quota, whether, in fact, fishermen will avoid concentrations of fish, and avoid discarding once a state quota limit or a trip limit is reached, or if in fact they just keep going and throw them over the side in order to keep whatever they catch. We don't have any way to estimate that right now. After we get some sea sampling data with some kind of coverage we might be able to get a little bit of insight into people's behavior.

Mr. Haring: Just thinking about it, that might change the lower end of the quota scale. You might have maybe more variation.

Dr. Gabriel: Yes. It would spread this proportion and may be spread more evenly.

Mr. Haring: The probability of achieving that F at the lower quota level is not as robust an estimate as a higher quota level. In other words they would have to avoid the fish. Would that follow?

things. They won't tell me what they are reporting it as because they know that people may know who it is. It would stand to reason any time you have to look at something like this, someone is going to try to circumvent it.

→ Mr. Pierce: Wendy, do you have some more information that we can use to get a feel for discard mortality. Our agency just completed a survival study of fluke in Vineyard Sound. Granted, it is not waters in the Continental Shelf, it is in waters, let's say, 35-60', and the tows were of relatively short duration. But the assumption here is 100% mortality of discards. The work that we did involved taking the fluke, leaving them on deck for about 1/2 hour, then putting them in cages on the bottom for 24 hours. We had a relatively small sample size, 173 flounder. We had 94% survival over 24 hours, so obviously it is not longer than 24 hours, and it is a relatively small sample size, but it is not 100% mortality. I bring that to your attention because certainly this sort of information that was a major effort on our part to try to get some information about discard mortality does provide us with some positive information that is almost completely opposite from 100% mortality, with 94% survival.

Dr. Gabriel: How were your samples divided by size?

Mr. Pierce: Most of the fish were legal size - over 14".

Dr. Gabriel: OK, so that is in this part up here. The big problem here is down here with the 0's.

Mr. Bryson: What time of year was this? 193 P-1

Mr. Pierce: It was in the summer.

Mr. Halgren: How long were the tows?

Mr. Pierce: Half hour tows. Over seven days, we made 53 one-half hour tows. We caught 200 summer flounder, with 20 being sub-legal, and then using the procedures that I mentioned, we had a mortality of 94%. Certainly more research is warranted, but still it was nice to see 94% survival as opposed to 0% or 10%.

Mr. Bryson: That is encouraging. We did hear from Vaughan, though, when he made his original recommendation to us about mortality, that if we had even one hour tows that this mortality would go way down. It was a common practice of two hours, or sometimes more that he based his mortality estimates on as I recall.

Dr. Gabriel: Yes, and at one of these other meetings, Jack Musick was anecdotal as far as his observation but mortality rates of summer flounder at the southern end of the range he felt was pretty significant.

Mr. Bryson: That and discard techniques. Of course, you are using carefully handled fish versus a pick.

Mr. Pierce: My point is that a lot of fluke comes out of area 538 during the summertime and the water depths are 60' or so, and if there is this sort of survival rate, this actually is typical of what we would see with the tows by the fishing fleet in Nantucket Vineyard Sounds, tows that are usually 1/2 or 1 hour or sometimes less than that, that it might or would give us cause to ...

✱ Mr. Bryson: I think it is nice doing the data, it is very helpful to us, but it wouldn't be typical unless the fishermen are using the same techniques you are using. I don't think they are. I think they are using picks to discard. We need more of it, I agree.

Mr. Halgren: Nevertheless, maybe all we need is educational programs. Maybe the fishermen won't use picks if they recognize that they get ...

Mr. Pierce: That is the idea of the study to provide a new bit of information to plug into this analysis, although ideally that would be what we would like. It is to give us some information that we can feed back to the fishermen to indicate to them that there is good potential here for high survival if the fish are treated with a little bit more care, the tows are shorter, etc. ✕

Dr. Gabriel: I think obviously the most sensitive part of it are the smallest fish. These are the ones that are proportionally discarded the most, and so that is the part here that is going to be proven and tweaked most by that factor, so many people slant studies towards the smallest fish. In this part of the size range here, under those circumstances, then that would help booster the size limit.

Mr. Bryson: One thing that we haven't been putting into this, but it would be quite logical to do so, is some recommendations for some research and this is a good start date. It would be nice to ask NMFS for that potential.

Mr. Haring: I just had a couple more questions to try and get a handle on what is happening in 1993. What kind of enforcement reports are there - NOVA's or even anecdotal reports of violations going on?

Mr. Bryson: Unofficially, and somebody else will have to give you the official, probably from Kathy, but what we are hearing from the fishermen, at least some states are really cracking down. Others, practically none. I think it varies throughout. In fact, we have got four states in non-compliance, which leaves the data uncertain as to where you are going to be.

Mr. Haring: Unofficially, are enforcement reports, NOVA's and state enforcement agencies writing people up?

Mr. Bryson: I see an awful lot of it. I think most of the activity I've heard about is recreational fishermen complaining about being fined for undersized fish. I think there have been some commercial violations. But I know some recreational fishermen have had \$40 a fish in Delaware.

Mr. Haring: What is the price of summer flounder these days in comparison to last year at this time? Is there a greater incentive to try and sell these fish, or is the price kind of low?

Mr. Bryson: I think the price is fairly good, but the best factor may not be the price, but the availability. There is nothing else out there to go get, so if you have a chance at fluke, if there is a way to get around the regs or the law, there is an incentive to do it, just because there is not a whole lot out there to catch.

Mr. Haring: The third question is in regard to the seasonality of landings. Prior to this time period, when things were more or less normal, is there a pickup in the fall or early winter on landings?

Mr. Bryson: We have a little bit better data than we really had last year, I think, to make projections under. You just don't have the history coming in that you would liked to have had. It is very, very meager.

Mr. Haring: Qualitatively, there is generally a pickup in landings towards the end of the year?

Mr. Bryson: I think what you do know from fishermen through reports is that the availability has been much better this year than last. That is pretty much across the board, that fishermen have had better success. Now, what does that do to your landings? We have a bag limit for recreational, based on the assumption as to what they would catch, and the assumption was not that all of the people would catch 6 fish. If we assumed that everybody would catch that, we would probably have to limit it to two, or maybe three. As they get more successful in catching 4 to 6, how close did we stay to our recreational catch of last year, does anybody know? We won't know for a while.

Mr. Halgren: Along that line, I just have one question, and that is has NMFS been looking at any mechanism of checks on the dealer reporting, which is mandated, but very voluntary? In other words, have you tried to, in any way, compare the reported data from the dealers to port checkers, and that sort of thing, port agents?

Ms. Rodriguez: Port agents are picking up that information from the dealers primarily.

Mr. Halgren: Yes, I know, but that is not from the books. That is their report. Are they comparing that then to the books?

Ms. Rodriguez: You mean, actually seeing dealers books?

Mr. Halgren: Yes.

Ms. Rodriguez: I think in some cases they take it directly off of the dealers books. It is different state by state. I know that some of the dealers just open their books, and to the port agents say, 'here, take it' ... they just simply write out a slip. One thing the port agents are doing is identifying the dealers who are not providing information and not cooperating. We have enforcement authorities and intend to follow up on that. The best check on all of this would be to put a vessel reporting system in place. That is still scheduled to be in January of 1994.

Mr. Halgren: Ok, you brought that up, so let me ask questions. Is there any possibility or are you planning to have those vessel reporting forms on any kind of NCR format or multiple sheet formats so that states could get copies?

Ms. Rodriguez: You mean so that fishermen could use the same reporting, state reporting or ...?

Mr. Halgren: No, I mean so they can fill out one and make two or three copies.

Ms. Rodriguez: Yes, there will be three copies. One for the state, one for their own records, and one for NMFS.

Mr. Halgren: Wendy, just one thing, and I think I heard you say the middle of the road estimate of 14.4 is based on projected recruitment of being about medium. If, instead of using any projection at all, and you use two or three year running average of prior recruitment years, what would that do to your estimate?

Dr. Gabriel: The stock sizes that I showed you are, in fact, based on the mean from 1988 to 1992.

Dr. Moore: Wendy, while you are looking, would you get that overhead out on the recruitment series because there is a question about that.

Dr. Gabriel: Reading the fine print down here of the age 0 is in fact geometric mean from 1988 to 1992 of plus or minus the standard error that is the mean level of recruitment because we have no survey in the season in 1993 to estimate that. So that geometric mean is based on those observations. Here, the mean of this value leaves one, two, three, four, five values here. So that comes out to around, as you can see, around the .33 value there, is about equal to these two values. These two are a little bit above, and that one is below to balance it off, so that would be a 33,000 value that would be put into a projection with the average of these five most recent years.

That is the uncertainty in the age 0. The uncertainty of age 1's, these are age 0's in 1992, which translated to age 1's in 1993. So we have this disparity in our estimates of the age 0's in 1992. That is why we incorporated some variability around the age 1's in the deterministic projection.

this index is very low in the lowest of years, and that tends to anchor that relationship. So this index is weighted the highest. This index though is weighted second ... it was weighted almost the same as the VIMS index. Again, it tracks this trend of recruitment here, the problem is that it doesn't fit very well up here. But it does, even though it is close to the origin, ends up picking up this 1988 year class as being very low and then some increase off of the bottom since then. And then a decline in the recruitment from 1986 to 1988. It is kind of tough to see that on the scale. I'm not sure, I will have to check and see if there is an observation back in 1982 or if the graphing pack is filled in at that point. Part of the problem with using these recruitment indices again is that we are trying to estimate a coastal wide phenomena from regional surveys, so what we have got here may be absolutely perfectly legitimate and 100% on the mark for what is going on in the Virginia estuary that is surveyed and in the North Carolina estuary that is surveyed, and in the Rhode Island series, but there is a lot going on in Delaware and New Jersey and so on that we don't know about and we don't know how to integrate that. So bear in mind that these indices historically have monitored a general trend of stock coastwide, but it may be possible that in any one year something strange has happened in one estuary. In this case here, we don't know if that is a stock wide phenomena, or a local phenomena, or both.

Mr. Bryson: Anything else for Wendy? Next we will have the 1994 quota recommendations. We will have Chris Moore kick it off, and then Dick Sisson will come in with his part. Wendy, I will ask you to ... as Chris goes through this ... particularly his Table 1 and look at the data, and maybe with the 1992 catch, commercially and recreationally ... I spent almost a day on the phone Friday with fisherman who say that they got data from the Center showing 20 million lbs catch in 1992 commercially. But I think what happened, they got the Fisheries of US data which included all the flounder and not summer flounder ...

Dr. Gabriel: One of them caught up with me yesterday and asked the same question. I think I gave him the same answer that you did.

Mr. Bryson: Ok, the point is there's a lot of information out there and some of it may not be the best. These are some of the things that you are going to face as you go through all of this.

Dr. Moore: I am going to be talking about a memo that I passed around this morning dated August 25th ...

Mr. Bryson: Excuse me. Before you start this, are there any other questions for the scientists?

Mr. Weiss: On the disparity between the VIMS and the North Carolina survey indices, have you looked at any of the particulars of how those surveys are conducted to explain the disparity? How or when?

Dr. Gabriel: They are standardized. As far as I understand, they are standardized surveys. So they are done the same way each year, unless there was something strange seasonally that happened this year, the fish weren't there the time the survey was. The survey goes out each year at about the same time with the same piece of gear pretty much. So that the effective year and seasonality of sampling are fixed pretty much as possible. Now the fish may not be on the same schedule as the survey, and that we can't account for, but it is very difficult, for example, the time of the survey, or the water temperature, or something like that. But to the point that the human factors in the survey as far as the statistical design and standard piece of gear every year, it is not that this year they went out and changed the mesh size on the sampling gear so that all of a sudden they caught more or less fish than they did previously, or they added extra stations in the areas where the fish are caught. So I think that there is nothing like that this is from the scientists control, that I know of, in those years, that changed radically in either one of those surveys.

Mr. Weiss: I am sure there wouldn't be, but there may also be some factor in the manner in which the survey is conducted or the climate in which it is conducted that may subject them to natural changes in migratory patterns or whatever, that resulted from water temperature, and climate fluctuations, weather conditions, and so on.

Dr. Gabriel: Yes, it is possible that for example, under some unusual circumstance, it was too cold or too warm, and the fish weren't in the usual place where the survey ... you know, in that particular season, but I don't have any anecdotal evidence for people who say, 'gee, the survey ... it was really cold in the estuary in this particular year, or really warmer than usual, or there were a lot of jelly fish or ebb tides', or things like that. That doesn't mean that something like that may not emerge and that really is happening. We have no way to correct that. And again, this is based on the fact that over time, the surveys have done a pretty good job of matching abundance trends, and this particular year, there is bound to be some fluctuations, particularly here, we don't know what is causing it, what the availability is to the survey abundance but we haven't heard anything from the people who are involved in the survey that they noticed something really unusual about the environment.

Dr. Moore: Back to the memo, many of you know that the reason we are here today is that the Summer Flounder Fishery Management Plan requires that a monitoring committee meet annually to review the best biological and fisheries data and make recommendations regarding the commercial quota and other management measures in the plan. Dick Sisson has prepared a review of the Fishery Management Plan, the stock, fisheries, and state regulations to date. That was Attachment 1 to this memo. I don't know if Dick would like to talk about that review? Do you have any comments?

Mr. Sisson: Just a couple of general comments. The Review is done annually for the ASMFC Management and Science Committee which meets in August. There may be some things in here that are not quite up to date. They were up to date as of the Management and Science meeting. At that meeting, I was asked to add some things to the report to make it easier for the commissioners that are going to be reviewing this in November to understand things. The first addition is Figure 1 showing summer flounder landings, commercial and recreational aspects of the fishery.

The second thing they asked me to add to the report was a juvenile fish survey that Herb Austin had given to us as raw data. They thought it would be helpful to put the young of the year survey for summer flounder for 1979 through 1992. I have included that. I was just looking through the report and I found a problem that I think was caused by margin justification. It appears that a line has been left out just before section VII Recommendations. "The recreational fishing season coastwide is for summer flounder during the period May 15 to September 30 annually ...". And then there is a thought missing because it picks up "... is 14 inch minimum size, and a six fish possession limit." I don't know what the other report said because I didn't bring that draft with me, but I will correct that.

It was also suggested that a table showing the quotas for 1993 be included. This one includes the adjustment that was made from Connecticut, I believe. I am almost positive that it does.

Mr. Christian: Just a clarification of a question about the Review Team listed here.

Mr. Sisson: This is the ASMFC Review team but it does include people from NMFS, ASMFC, and the Mid-Atlantic Council. This has gone through extensive review. I spoke to a couple of people this morning. I had very valuable input from three different reviewers in North Carolina. It seems as though the final review challenged some of the findings of other team members from North Carolina, so we may hear some more about the review, but I am happy with the way it is presented now, as I hope Rick is.

Dr. Moore: In a couple of the documents, and Wendy's documents, that have been mailed to you, as well as the document that Dick talked about, we have tables of commercial and recreational landings. Table 1 of my document, I have a table of years from 1981 to 1992 just to show recent trends of commercial and recreational landings. If you look at 1992 commercial landings compared to the 1991 values, you see the commercial landings actually increased in 1992 by 17%. Preliminary 1992 data indicated commercial landings of 16.1 million lbs. However, the recreational landings decreased slightly from 1991 to 7.4 million lbs in 1992 compared to the 1991 value of 7.8 million lbs. Both the 1992 commercial and recreational landings were well below the 1981 to 1992 average of 23.9 and 15.4 million lbs respectively.

Now we are operating in 1993 under a commercial quota of 12.35 million lbs and a recreational harvest limit of 4.36 million fish or 8.38 million lbs. The 1993 commercial landings to date, the date being August 14th, indicate that 57.7% of the coastwide commercial quota has been taken. Most states still have quota available to the commercial fishermen for the year, although a few states (Maine, New Hampshire, and Delaware) are closed to federal permit holders for the year.

I also had an opportunity to review or look at some of the preliminary recreational data for 1993. The first three waves of the recreational data were available for analysis and these data are preliminary. They indicate through June that 718,606 lbs or 525,709 fish have been landed. Of course, like every year, the recreational landings data come out sometime in the early part of the following year. So we won't have the landings information for the entire year until early 1994.

Mr. Halgren: Chris, just offhand, do you know how that compares with the same timeframe in say the previous year?

Dr. Moore: You can't really make a direct comparison because 1993 will operate under a totally different system. And notably, in most states the recreational season began sometime in May. Mostly it is May 15th, in New Jersey I think it is May 24th. There is really nothing to compare to. But if you look at the 1992 data, the landings are down, compared to 1992.

Mr. Halgren: They are down compared to 1992?

Dr. Moore: Yes.

Mr. Pierce: Chris, with a few months left in year, would you have any feel based upon the past fishing practices whether there are prospects for the recreational fishery, taking the amount that was set aside for it this year?

Dr. Moore: We will talk about it a little bit later. We have some comments about that. Again the only data that is available to me officially through NMFS right now is data through wave three. Of course, the waves that are important to us are the waves three through five because of the recreational season. Wave five is through October. Those would be the important waves we would look at.

The plan requires that the Committee recommend a coastwide commercial quota and recreational harvest limit each year. Wendy discussed summarized results of the VPA and we have the same target fishing mortality rate this year as we had last year, and it is going to be the same target fishing mortality rate next year. Again, details of the following reports will be mailed to you. As Wendy indicated, stock projections for 1994 were conducted using low, mean and high estimates recruitment as well as the number of age 1 fish. Recruitment at age 0 in 1993 and 1994 is assumed equal to the mean recruitment which is 33.8 million fish estimated by VPA during 1988 to 1992. Stock projections were also made using a high and low recruitment level which is based on the mean recruitment level plus or minus one standard error. As Wendy indicated, unlike last year, the projections in 1994 accounted for a similar range of values in the number of age 1 fish in 1993, and a range of estimates of 24.4, 32.9 and 41.3 million fish for that age group in 1993.

→ The staff's recommendation is that the quota associated with the conservative level of recruitment and age 1 fish be used to manage the summer flounder fishery in 1994. Based on these levels, the amount of summer flounder that could be landed would be 26,675,934 lbs. This represents a 28% increase compared to the harvest level implemented in 1993. Based on the historic proportion of summer flounder landed by commercial and recreational fisheries, 16,005,560 lbs would be allocated to the commercial fishery, 10,670,374 lbs or 7,613,936 fish would be allocated to the recreational fishery in 1994.

Although the harvest level of 26.68 million lbs is 16% less than the level associated with the mean recruitment at age 1 level which would be 31.75 million lbs, the staff believes that the implementation

of the lower quota is a risk adverse strategy that will benefit both the resource and the fishermen. There are several reasons that we list as to why this lower quota should be implemented for 1994. I think it is important that we go over those. The first of these is that the summer flounder stock is composed primarily of age 0-2 fish and the fisheries rely heavily on incoming recruitment. In fact, only about 11% of the spawning biomass is comprised of fish age 3 and older, which means, corresponding to that, 80-90% of the landings are comprised of fish ages 0-2. The 1994 stock size is derived principally from estimated recruitment levels for 1993 and 1994. Overestimates in recruitment would result in quotas that would exceed the target F level.

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Another reason is that there is a greater chance of achieving the target F level for 1994 at the lower quota. This is the presentation I would like to make today. The analyses have been reviewed by the SARC. Their percentages are a little bit better than mine because I have got preliminary information. Analyses conducted by the staff at the Center indicate that the probability of attaining the target F with a quota of 26.68 million lbs is about 80% based on the information we have heard today. The probability drops to about 60% if the higher quota associated with the mean recruitment levels is implemented.

The third reason is the 1993, 1994 stock size estimates assume that the 1993 quota will not be exceeded. That is, the target F will be met and this is an important point. Stock size estimates assume all landings are reported and discard rates do not increase. Unreported commercial landings, high grading and dumping by commercial fishermen, and noncompliance by recreational fishermen would increase fishing mortality rates in 1993 and reduce the estimated stock sizes in 1993 and also in 1994.

The fourth reason and another very important reason is that the target fishing mortality rate will be reduced to the Fmax level 0.23 in 1996. The difference between the F level of 0.53 and the max level of 0.23 in terms of exploitations, is about 50%. We are looking at another 50% reduction in exploitation compared to the current exploitation level associated with our F of 0.53. That is a major drop. If the lower quota level is implemented in 1994 and recruitment in 1993 and 1994 is greater than the assumed level, in other words, greater than a low value than we have assumed, the spawning stock biomass will increase at a faster rate. In fact, analyses conducted by the Center indicate that each reduction in the amount of summer flounder landed, allows for an equal or larger increase in spawning stock biomass. Larger stock sizes in 1996 will allow for a larger quota that would minimize the impacts of this additional reduction in the fishing mortality on the fishermen.

Based on a coastwide commercial quota of 16,005,560 lbs, the amount of summer flounder allocated to the commercial fisheries in each state would range from 80 lbs to 4.4 million lbs. That is in Table 3 of my memo. You can see how these quotas compared to the current quotas of 1993. Remember the way that the plan was approved, these quotas were provisional, and will be adjusted early in 1994 to reflect noncompliance by the states. In other words, the 1993 quota excess would be deducted from the 1994 quota allocation.

The staff recommends that the management measures used to regulate the recreational fishery for 1994 not be set until the 1993 recreational landings are reviewed. It is possible that the 1993 catch limit was exceeded due to non-compliance by several states, the states being Connecticut, Maryland, Virginia, and North Carolina, with the possession limit and/or recreational season. These four states accounted for approximately 35% of the recreational landings during the years 1980 to 1989. So they are significant states.

The 1993 recreational data should be available in early 1994 to determine if the coastwide harvest limit is met or exceeded. If the harvest limit for 1993 is not exceeded, the possession limit could be increased and/or the season extended to allow for the higher harvest limit in 1994. However, it is probable that the number of anglers fishing for summer flounder will increase as the stock rebuilds. In addition, the number of successful anglers, as well as the number of anglers landing the possession limit will increase as more summer flounder become available to the recreational fishermen. That is

ATTACHMENT III:

Annotated letter from Jim O'Malley to William Fox

FROM : EAST COAST FISHERIES

PHONE NO. : 364 9814

P01 BF

CC: NER
FICM

EAST COAST FISHERIES FOUNDATION, INC.

April 10, 1992

VIA FAX

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Dr. William W. Fox
 Assistant Administrator for Fisheries
 National Marine Fisheries Service
 Silver Spring Metro Center #1
 1335 East-West Highway
 Silver Spring MD 20910

Dear Dr. Fox:

The following are comments in response to the Draft Environmental Impact Statement for Amendment #2 to the FMP for Summer Flounders:

1. The shortening of the comment period from 30 days to 15 is a clear abuse of process, and truncates the necessary public input for an effective management plan which will find the support of the industry. *He first time to do so again during PCP on proposed red*
2. There is no analysis of the economic impact of the one-mesh-on-board requirement. Such a profound disruption of traditional fishing methods clearly requires far greater study. This is especially true because the requirement impacts virtually all other fisheries in the region. *This says we should analyze the economic impact of making the summer of the low! Bullshit.*
3. There is no economic or social impact study of the imposition of a moratorium in the fishery. While fishery management plans have seldom paid more than cursory attention to social impacts, there is a clear requirement to do so. The DEIS for summer flounder falls in this regard. At the very least, there needs to be a thorough study on the changes in traditional family structures when individuals are closed out of an accustomed fishery. There are, of course, a host of other issues consequent to the imposition of an exclusionary system, such as alternative income opportunities in rural communities for those individuals excluded from future participation in the fishery. *Disreal! He knows families now fishers will be able to continue to do so*
3. There is a significant vessel safety consideration in requiring vessels to stay offshore when weather conditions are such that prudent fishermen would choose to fish closer to the beach. The Exemption Program currently in effect creates an administrative compulsion to fish under dangerous conditions. *We will eliminate!*
4. The income requirement for a permit is an untested management mechanism and bears little relation to resource conservation or management. As with the imposition of the moratorium, the social and economic impact on fishing communities, where the fluke fishery may be an important component of a multi-source income, must be fully analyzed. The "minimum standard" for participation in the fishery is completely arbitrary. *The standard for entry is, if anything, much too broad!*

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5. The line delimiting the Exemption area bears no relation to the incidence of immature fluke or discard mortality, and serves no conservation purpose. The line *we will delimitate* clearly disregards the best scientific information available, NMFS' own sea-sampling data.

6. Ironically, the requirement to commit to a directed fluke fishery demanded by the line and the Exemption program actually increases effort in the fishery, since a vessel enrolled in the Exemption program may not pursue other fisheries. The administrative capriciousness of the program has the opposite of its intended effect by forcing vessels to remain in the fluke fishery when other fisheries might be more attractive—and take pressure off the fluke. *This was implemented at the direct request of industry!*

7. The imposition of a moratorium on the commercial fishery and none on the recreational sector is patently discriminatory. *Five Bellsuit. The Rec fishery is being managed differently but no Bellsuit in gentle*

8. The effective increase in effort permitted to the sport fishery (computing the average recreational catch with the bag limit specified in the DEIS) does not correspond with the plan's intention to reduce effort. If the commercial fishery is to have its effort dramatically reduced, the recreational fishery, whether charter boat or individual, should be required to share in the effort reduction program. *It is!*

The 100-pound bycatch limit is a reviving of a senseless regime which promotes discarding, highgrading, and misreporting. Vessels will discard smaller and less valuable fluke to keep larger ones. Vessels will discard sometimes significant amounts of legal-size fluke when they have reached their bycatch limit. Both those situations are further unfortunate examples of administrative actions which inadvertently produce the opposite of the intended result and harm the resource. *suggest a viable alternative - like Quotas? For fish's time? What do you like?*

10. The state quota system rewards those states that had less restrictive conservation measures than other states during the period 1980-1989. A smaller minimum size requirement results in greater historic landings and a greater current quota than a state which had stricter conservation measures in place. To reward past failure to implement conservation with greater future allocations is repellent. *This statement is pure Supposition and I do not believe there is any data to back up*

11. Although Section E-2.b is entitled "Cost/Benefit Analysis," there seems to be little more than a recitation of statistics relating to the fishery. Those statistics are acknowledged in the DEIS itself to be severely lacking. For a plan to go forward when the "number of plants handling summer flounder is unknown," and the "information on the total number of vessels actually landing summer flounder...is difficult to assemble," is irresponsible. It is also clear that the recitation of current estimated statistics does not constitute a cost/benefit analysis. In fact, it appears that, despite several readings of the DEIS, there actually is no cost/benefit analysis. *Suggested alternative*

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These are a few of the many issues which have not been adequately addressed in the DEIS for the Summer Flounder fishery. The DEIS appears to be wholly insufficient, given the lack of data; the failure to address significant issues relating to vessel safety; the arbitrary and discriminatory imposition of a moratorium on only one sector of the industry; the lack of sufficient cost/benefit analysis; the total lack of social impact analysis; the failure to co-ordinate the plan with the best scientific information available; and the failure to assess the impact of the plan on other fisheries.

I look forward to working with you to creating an FMP for the Summer Flounder fishery which incorporates the concerns noted above.

Sincerely yours,

James D. O'Malley
James D. O'Malley
Executive Director

I am sure he feels he is smarter than the combined ASMFC/MAFMC/NMFS, but I didn't note any suggested alternatives that might contribute to the conservation of the summer flounder resource. What has been said here is that the management measures impact negatively on the industry (at least in the short term) and he doesn't like it. Does he believe that summer flounder should not be actively managed and shortly join the list of endangered species?

JOM/sc

Cr: J. Bryson
D. Corttingham
D. Marshall

000950

ATTACHMENT IV:

**Article on effects of pollution from
Northeast Fisheries Science Center publication**

Northeast Fisheries Science Center

Page 3

Research Highlights

November-
December
1992

Office (NEROO) for the latter's use in responding to the spills. (For example, should dispersants be used to reduce oil damage to spawning areas?) The NEROO and other NOAA participants said the NEFSC's information and advice were timely and beneficial, and agreed well with that provided by Maine and Canada.

Contact Robert N. Reid, (908) 872-3000.

Pollution Linked to Fish Embryo Mortality along East Coast

The problem of overfishing currently dominates management of the Northeast's marine fishery resources. If/when that problem is solved, another problem -- pollution -- will likely begin to dominate management. The NMFS Northeast Fisheries Science Center has recently published a paper in *Environmental Biology of Fishes* on the role of pollution in the direct mortality of Atlantic mackerel embryos, and in the indirect mortality of early life stages of Atlantic mackerel, windowpane, and winter flounder due to contamination of adults of these species prior to their spawning.

There appears to be a threefold increase in the mortality of Atlantic mackerel embryos, and in the mitotic (cell division) error of adult windowpane and winter flounder, from the least-polluted to most-polluted sites in the Northwest Atlantic. This threefold increase suggests that pollution, operating through chromosomal abnormality during egg production and embryo development, may account for a significant portion of early life stage mortality in the most-polluted locales.

The article, "Pollution and Developmental Abnormalities of Atlantic Fishes," also speculates on natural selection for pollution tolerance, and on the consequences of such selection for fish populations and fishery management.

Contact Dr. Arlene Crosby Longwell, (203) 783-4200.

New Species of Midwater Fish Described

A third new fish species -- the midwater snapper *Paracaesio waltersvadi* -- has been described from December 1988 collections by the Russian research vessel Vityaz on Walters Shoals south of Madagascar.

Contact Dr. Bruce B. Collette, (202) 357-2524.

Center Authors Sweep 1991 "Best Paper" Awards in NMFS Journals

A paper by National Systematics Laboratory ichthyologist Dr. Thomas A. Munroe has been selected as the best paper appearing in the 1991 volume of *Fishery Bulletin*. Munroe's paper deals with "Western Atlantic Tonguefishes of

ONE HUNDRED THIRD CONGRESS

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U.S. House of Representatives
Committee on
Merchant Marine and Fisheries
Room 1334, Longworth House Office Building
Washington, DC 20515-6230

June 28, 1994

M E M O R A N D U M

TO: Members, Subcommittee on Fisheries Management

FROM: Subcommittee Staff

SUBJECT: Hearing on H.R. 4430, a bill to amend the Magnuson Fishery Conservation and Management Act

INTRODUCTION

At 2:00 P.M. on Wednesday, June 29, 1994, in Room 1334 Longworth, the Subcommittee on Fisheries Management will hold its final hearing on the reauthorization of the Magnuson Fishery Conservation and Management Act (popularly known as the Magnuson Act). The hearing will focus primarily on the issue of "user fees" as contained in H.R. 4430, the Administration's proposal to reauthorize the Magnuson Act. H.R. 4430 was introduced by request on May 17, 1994, by Chairmen Manton and Studds.

Doug Hall, Assistant Secretary of Commerce for Oceans and Atmosphere, will testify on behalf of the Administration.

The Subcommittee will also hear testimony from the Honorable Wayne Gilchrest, sponsor of H.R. 4404, the Marine Fish Conservation Amendments of 1994. H.R. 4404 is supported by the Marine Fish Conservation Network, a group of over 40 environmental organizations and fishing interests.

BACKGROUND

The Magnuson Act was last authorized and extensively amended in 1990 (P.L. 101-627). The current authorization expired on September 30, 1993.

Subcommittee on Fisheries Management
 Magnuson Fishery Conservation and Management Act
 June 28, 1994
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The primary goals of the Magnuson Act, passed in 1976, were the conservation and management of the U.S. fisheries resources, the development of the U.S. domestic fisheries, and the phase-out of foreign fishing activities within the 200-mile fisheries conservation zone adjacent to the U.S. coastline. This area became known as the Exclusive Economic Zone (EEZ) following a 1983 proclamation by President Reagan.

The Magnuson Act has achieved the goals of restricting foreign fishing vessels in the EEZ and developing domestic fisheries. The percentage of fish harvested by foreign nations has declined from 71 percent of the total catch in 1977 to about 0.2 percent in 1991. However, some critics contend that the law has been less successful in conserving fisheries resources.

The Magnuson Act created eight Regional Fishery Management Councils (Councils) charged with implementing these goals through the promulgation of fishery management plans in coordination with the National Marine Fisheries Service (NMFS).

The National Fish and Wildlife Foundation reports that 33 percent of fish stocks under Council management are currently less abundant than before the Magnuson Act was passed in 1976, and the National Marine Fisheries Service (NMFS) estimates that 59 percent of assessed U.S. fish and shellfish stocks are currently either overutilized or fully utilized.

In addition to managing fisheries resources for conservation purposes, Councils are responsible for recommending resource allocation among various and often competing users. The process of managing fisheries is accomplished through preparation of fishery management plans (FMP's) by the Councils with the approval of the Secretary of Commerce. To date, the Councils have prepared and implemented over 30 FMP's, some with numerous amendments.

Following the development of an FMP, a Council forwards the plan and proposed regulations to the Department of Commerce. The Department must approve the plan or return it to the Council for further consideration or revision. If the plan is approved, NMFS must then issue regulations to implement the plan. Some find this process lengthy and inefficient since the Department does not begin to review an FMP until the plan has been submitted by a Council, often fails to meet statutorily mandated deadlines, and is prohibited by statute from making revisions to the plan even in the face of changed circumstances.

The national standards for fishery conservation and management that guide the Councils' work (contained in Section 301(a) of the Magnuson Act), and the key principle of optimum yield (which includes ecological, social, and economic factors) require the Councils to achieve a balance among users and between science and socioeconomic factors. In attempting to achieve this balance, the Councils are often criticized by those who believe that particular standards or factors are not properly addressed or given adequate weight.

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FUNDING

H.R. 4430 authorizes the appropriation of funds for implementing of the Magnuson Act in the following amounts:

\$ 103.218 million for Fiscal Year 1994;
 \$ 142.502 million for Fiscal Year 1995;
 and such sums which may be necessary for Fiscal Year 1996.

ISSUES

Numerous issues relating to the Magnuson Act and its implementation have been raised by the commercial fishing industry, conservation groups, scientists, the Regional Councils, recreational fishermen, and Federal officials. The following highlights considerations that have received significant attention and analyzes how the Administration proposed to address these issues:

USER FEES

H.R. 4430 would delete the current limit on the Secretary's authority to establish fees.

The Secretary would be given discretion to assess fees (1) for permits issued pursuant to the Magnuson Act and (2) to cover the costs of implementing conservation and management measures authorized by the Act, when it is determined by the Secretary that participants in the fishery will receive direct and substantial benefits. These fees would be required to be fair and equitable to all participants and meet the requirements of 31 USC 9701(b) (the User Fee Statute). These discretionary fees could be assessed on both recreational and commercial fishermen.

The Secretary would be required to establish fees of up to 1% on the ex-vessel value of fish sold within the U.S. This fee would be assessed only at the time of the first sale. It is unclear whether these fees would apply to fish harvested in State waters, farm-raised fish, or imports.

The Secretary would be also required to establish fees of up to 3% of the value of fish authorized to be taken through shares assigned under a limited access program to persons or vessels (e.g. Individual Transferable Quotas).

These fees could be used for a number of purposes traditionally associated with fisheries management, such as data collection and enforcement, and also for the "buyout" of vessels in limited access fisheries. Fees would be collected and expended only as provided in appropriations acts.

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Foreign Fishing

Section 3 of H.R. 4430 would amend section 201 of the Magnuson Act to permit the Secretary of Commerce to authorize a foreign vessel to accept the transshipment of fish at sea even if that foreign vessel is not subject to a governing international fishery agreement (GIFA). Under current law, transshipments to foreign vessels can occur only pursuant to a GIFA or at a designated port.

Council Composition

Section 7 of H.R. 4430 would add a member to the Pacific Fishery Management Council from an Indian tribe with Federally recognized fishing rights. The Secretary of the Interior would nominate a minimum of three persons and the Secretary of Commerce would select the Council Member. The selected representative would serve for one three-year term. This designated seat would rotate among the tribes of the region.

Conservation

In order to ensure that Councils develop fishery management plans for stocks that are overfished, H.R. 4430 provides that the Secretary shall notify the appropriate Council whenever he finds that a stock is overfished. The Council would then have a year to prepare a fishery management plan for that stock. If the Council fails to act within a year, the Secretary would be authorized to develop a plan. The bill deals with highly migratory species by removing some restrictions on the Secretary for implementing policies related to foreign fishing vessel reporting requirements, transshipment and foreign fishing applications.

Management Process

H.R. 4430 would amend existing sections 303, 304 and 305 of the Magnuson Act to reduce the amount of information that is included in fishery management plans and amendments and instead would implement a Federal regulatory process (effectively making all plans "framework" plans). All existing management plans would conform to the new formula within 1 year after the date of enactment of the bill; those plans that do not conform would be deemed to have their conservation and management measures deleted from the plans. The bill does not contain explicit language indicating whether current regulations implemented under a given plan will continue.

In amending these sections of the Act, H.R. 4430 would delete the limits on the Secretary's authority to establish fees (see above discussion on user fees); would remove the restriction on the Secretary's ability to establish a limited access system through a Secretarial plan; would replace the permanent ban on the release of confidential fish data with a 3 year ban; and would establish a mandatory nationwide fisheries data collection program.

Conflict of Interest

The Administration's bill addresses conflict of interest concerns by amending Section 302(k) to preclude a Council member from participating in a decision that would significantly affect the member's financial interest. This prohibition would remain in effect, unless the NMFS regional director determine in writing that the need for the member's participation outweighed the potential for a conflict of interest.

Individual Transferable Quotas (ITQs)

An Individual Transferable Quota (ITQ) is a management device that has been adopted by some Councils as a method to limit fishing activity in certain fisheries. In an ITQ system, fishermen are allocated a certain percentage of the total allowable catch (TAC). The fisherman can then take these fish whenever he chooses or he can transfer this fishing right to another person or vessel. The Subcommittee held a hearing on ITQs on February 9, 1994. The Administration bill provides that ITQs would be subject to a maximum 3% user fee and that the Secretary can only promulgate rules establishing ITQs after a recommendation by the appropriate council (except in the case of a plan or amendment prepared by the Secretary).

Bycatch

H.R. 4430 would add a new "national standard" requiring that conservation and management measures minimize bycatch and waste. The bill does not continue the moratorium on measures to reduce shrimp bycatch that expired on April 1, 1994.

Habitat Protection

Section 8 of H.R. 4430 directs Councils to annually prepare a list of essential fish habitat.

STAFF CONTACTS

Jim Mathews, Greg Lambert or Bill Price (majority, X-63514)
 Rod Moore, Bonnie Bruce or Dave Whaley (minority, X-63520)

CARIBBEAN CONSERVATION

C O R P O R A T I O N

June 28, 1994

The Honorable Thomas J. Manton
U.S. House of Representatives
Washington, D.C. 20515

Dear Representative Manton:

The Florida-based Caribbean Conservation Corporation and its national membership of 3,000 are extremely concerned about the degradation of our nation's fish populations, ocean habitats and marine wildlife. The Magnuson Marine Fish Conservation Act of 1976 has failed to adequately safeguard fish populations against collapse caused by poorly regulated commercial fishing practices. This collapse and associated habitat destruction is having a profound negative impact on the future of all marine life.

Fortunately, the Magnuson Act is up for reauthorization in 1994, and Representative Wayne Gilchrest (R-MD) has introduced "The Marine Fish Conservation Amendments of 1994" (H.R. 4404), which would enact strong fish and marine wildlife conservation measures. We urge you to co-sponsor Rep. Gilchrest's bill and help fight to ensure fish and other marine wildlife are around to enjoy for generations to come.

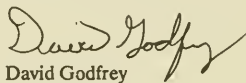
The Department of Commerce reports that unwise management of the U.S. fishing industry is causing lost revenues of over \$2.9 billion per year. The National Marine Fisheries Service reports that over 40% of the nation's fish species are overfished, with 14 of the most valuable ones threatened with commercial extinction. Fish landings are decreasing every year, jobs are being lost, and the possibility for recovery is slipping away.

The single most important factor in maintaining viable fish populations, as well as the diversity of other marine wildlife, is the health of our marine ecosystems. Overfishing, destructive fishing practices and depletion of coastal estuaries are causing these ecosystems to become barren and devoid of life. Added to this is the tremendous waste associated with fishing bycatch. Each year, millions of fish and other wildlife are wastefully killed and tossed overboard as a result of indiscriminate commercial fishing practices.

Overfishing, habitat loss and the problem of bycatch are all addressed in H.R. 4404, the Marine Fish Conservation Amendments of 1994. Once again, we urge you to familiarize yourself with this bill; become a co-sponsor; and help fight for its passage.

We look forward to a response from you; please let us know how you will vote on this issue. And thank you for considering our views on this critical national issue.

Sincerely,



David Godfrey
Program Director

Post Office Box 2866, Gainesville, Florida 32602-2866
Telephone: (904) 373-6441 Telefax: (904) 375-2449

Apartado Postal 246-2050, San Pedro, Costa Rica
Teléfonos: (506) 24-9215; 24-2053 Telefax: (506) 34-1061



ALASKA OCEAN SEAFOOD

LIMITED PARTNERSHIP

June 27, 1994

The Honorable Thomas J. Manton
Chairman, Subcommittee on Fisheries Management
534 Ford House Office Building
Washington D.C. 20515

Re: H.R. 4430, a Bill to Amend the Magnuson Fishery Conservation and Management Act

Dear Congressman Manton:

On behalf of Alaska Ocean Seafood Limited Partnership, I am pleased to submit the following written testimony concerning H.R. 4430, and request that this testimony be entered into the official hearing record for the Subcommittee's June 29, 1994, hearing on that bill.

Alaska Ocean Seafood LP is the owner and operator of the factory trawler ALASKA OCEAN. At 376 feet in length, the ALASKA OCEAN is the largest and one of the most modern surimi trawlers in the United States and represents an investment exceeding \$60 million. The ALASKA OCEAN operates in the Alaska groundfish industry for a primary target species of Alaska pollock.

We have read with interest the Administration's proposal for amending the Magnuson Act and are understandably concerned with the potential effects - both good and bad - that the proposal could have on our operation. In this testimony, we address two principal elements in the proposed bill - recusal and fees. In addition, we offer a suggestion for another amendment to the Act, concerning judicial review, which my partners and I consider essential to the fairness and equity of the fishery management system.

Conflicts of Interest and Recusal

In its current form, the Magnuson Act exempts members of the Fishery Management Councils from all federal conflict-of-interest statutes. We understand that the actual and potential conflicts of interest arising from these exemptions have been documented in earlier hearings before this Subcommittee. We therefore applaud the Administration's efforts to eliminate actual and perceived conflicts by inserting a recusal requirement in the Act.

2415 T Avenue • P.O. Box 190 • Anacortes, WA 98221
Phone: (206) 293-6759 • Fax: (206) 293-6232 • Telex: 883481

The Honorable Thomas J. Manton
 June 27, 1994
 Page 2

We agree with the Administration that the Council's exemption from 18 U.S.C. § 208 (see Magnuson Act § 302(k)(7)) should continue. The unique nature of the Council system and the Act's mandate that Council members be knowledgeable about the fisheries strongly suggest that conflicts of interest issues should not be governed by a general statute, but instead should be governed by a statute specifically tailored to the Councils themselves.

For this reason, we also agree in principle with the recusal requirements proposed by the Administration at Section 7(e) of the bill, but with three important exceptions.

First, the bill would allow the Regional Director to waive a Council member's conflict and allow him to vote. We do not believe that the Regional Director (or any other official) should have such waiver authority. This waiver concept is borrowed from an exception contained in 18 U.S.C. § 208; that exception is aimed at members of ordinary federal advisory committees. Beyond question, the Fishery Management Councils are vastly different from ordinary advisory committees, having extensive, substantive decision making authority. Conflicts of interest on Fishery Councils thus have a far greater potential for harm to the management system. Indeed, it is the presence of this exception in Section 208 that forms one of the bases for our view that Section 208 is not suitable for governance of the Councils.

Secondly, the bill would allow only Council members to challenge a disputed vote or a disputed determination by the Regional Director. We believe that industry members who will suffer directly the consequences of those votes and determinations should also be entitled to challenge them. We recognize, however, the pitfalls of allowing any member of the public to raise such challenges; we therefore suggest that challenges be permitted if two or more holders of fishery permits raise them.

Third, and perhaps most important, is the provision in the bill concerning the consequences of an improper vote. Quite simply, under the bill, there are no consequences at all. As a result, the recusal provisions in the bill are pecuniary at best; Council members may ignore them, vote in contravention of them, and produce a Council decision that will simply be allowed to stand. We believe that a recusal mechanism is meaningless unless an improper, determinative vote results in the Council's action being remanded for consideration without that vote.

We have taken the liberty of drafting proposed language which we feel adopts the principles underlying the Administration's proposal, but which also improves and strengthens that proposal by addressing the problems discussed above. That language is set out in Attachment 1 to this testimony.

Fees

Section 10 of H.R. 4430 proposes the imposition of two discretionary and two mandatory fees. Our concerns with this aspect of the bill are threefold: cost, other fees imposed on the industry, and use of the funds collected.

At the outset, it should be noted that my partners and I are not categorically opposed to all fees. We believe, however, that imposition of fees properly should await full comprehensive rationalization of the fisheries based on market forces. Such rationalization should result in the institution of systems like individual transferrable quotas (ITQ's). At that time, imposition of fees would seem more reasonable and appropriate. In any event, when and if fees are imposed, they must be fair and reasonable.

The potential fees contained in H.R. 4430 strike us as exceedingly high. As we understand the proposal, a vessel such as the ALASKA OCEAN would be subjected to a 3% fee for an ITQ, a 1% sales tax, a fee in an unspecified (and uncapped) amount for any permits, and a fee in an unspecified amount for the costs of conservation and management measures. Based on our average catch activity, we calculate that the first two fees alone would cost Alaska Ocean \$3,200 per day.

The Honorable Thomas J. Manton
 June 27, 1994
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Nor are these the only fees to which Alaska Ocean might be subjected. For example, the North Pacific Fisheries Management Council recently has proposed regulations that would impose a 2% fee on the ALASKA OCEAN to pay for the observer program. This would result in a \$1,600 daily levy on Alaska Ocean, and would be in addition to fees imposed by the Secretary. If the Act is to be amended to impose fees on the industry, we believe it is imperative that the Act be further amended to preclude the Councils from also imposing fees. In particular, Section 313 of the Act must be either repealed or amended.

Finally, we are concerned about the potential uses of the fees collected. H.R. 4430 would allow the fees to be expended in myriad ways and without regard to region of collection. If the proposed fees are implemented, the North Pacific fishing industry can be expected to pay 50% or more of all fees collected. The open-ended nature of the fee proposal makes it possible - indeed quite likely - that the North Pacific segment of the industry will subsidize the remainder of the industry, and will not realize benefits concomitant with the fees it pays. We strongly urge that any fee system be structured so that funds collected are earmarked for the region in which they are collected and for the programs from which they are collected.

Judicial Review

H.R. 4430 does not address an issue that my partners and I see as critically important, that is, judicial review of Council actions. This issue arises from the bifurcation of authority in the Magnuson Act. Although the Councils develop and draft the regulations that govern each fishery, the regulations are actually promulgated by the Secretary of Commerce. The Secretary's role in the process is really no more than ministerial, because he or she must promulgate any regulation that is consistent with relevant law. The Secretary has virtually no role in determining the substantive contents of the regulations; substantive rulemaking is a function of the Councils, not the Secretary. Unfortunately, in reviewing challenges to Council-developed regulations, the courts generally have failed to recognize the substantive role of the Councils and instead have focused only on the Secretary's ministerial actions.

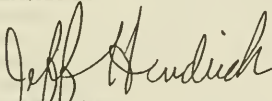
We believe that, because it is the Councils that have substantive rulemaking authority, the Act should be amended to permit judicial review of Council actions under the standards of the Administrative Procedure Act. Simple fairness clearly dictates the availability of such review, and we are unable to conceive of any reason why it should not be allowed.

We have prepared language that we believe would effectuate this change; that language is set out in Attachment 2 to this testimony.

* * * * *

We appreciate your attention to our views.

ALASKA OCEAN SEAFOOD LP



Jeff Hendricks
 General Manager

CONFLICTS OF INTEREST

SEC. ____ RECUSAL. -- Section 302 (k) of the Magnuson Fishery Conservation and Management Act (Public law 94-265), as amended (16 U.S.C. 1852 (k)), is amended by

- (1) inserting before the period at the end of the subsection heading "and Recusal";
- (2) by striking paragraph (2) (B) and inserting in lieu thereof the following:

"(B) the spouse, child, grandchild, parent, sibling, or partner of that individual";
- (3) striking the last six words of paragraph (3) (B) and inserting in lieu thereof: "to the appointing authority prior to appointment, and then not less than 14 days prior to taking office.";
- (4) inserting between "offices" and the period at the end of paragraph (5) (B): "and the office of the Secretary";
- (5) deleting paragraph (6) in its entirety and redesignating paragraph (7) as paragraph (6);
- (6) by striking all of redesignated paragraph (6) after the word "with" and inserting in lieu thereof "this subsection (k).";
- (7) adding a new paragraph (7) to read as follows:

"(7) (A) A Council member required to disclose a financial interest under subsection (k) (2) shall recuse himself or herself from voting on or participating in any particular matter before the Council that will have a direct and predictable effect on that interest. A particular matter will have a direct and predictable effect on a financial interest if there is a close casual link between any decision or action to be taken in the matter and any expected effect of the matter on the financial interest. An effect may be direct even though it does not occur immediately.

(B) The ability of any Council member to vote may be challenged on the basis of the restrictions of this paragraph by another Council member or by two (2) or more persons holding permits to fish in a fishery under the Council's jurisdiction.

(i) In the event that such challenge is raised before the vote, the challenge shall be addressed in the first instance by the Council member whose recusal is sought. In the event such Council member declines to recuse himself or herself from further participation, or initiates a request on his or her own for a determination, the regional director, after consultation with counsel, shall make a determination for the record as to whether the member has a financial interest requiring recusal hereunder. If the regional director determines that recusal is required, the affected individual shall state for the record, and for purposes of any appeal, how he or she would have voted and there been no recusal. Any determination by the regional director hereunder may be appealed to the Secretary by any council member or by any two (2) persons holding permits to fish in a fishery under the Council's jurisdiction. Such appeal must be taken within fourteen (14) calendar days of the regional director's determination. The Secretary shall make a final determination in his or her discretion within a period not to exceed thirty (30) calendar days from the date of such appeal.

Attachment I

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- (ii) In the event that such challenge is raised after the vote, the challenge shall be addressed to the Secretary and shall be made within fourteen (14) calendar days of the vote. The Secretary shall make a final determination in his or her discretion within a period not to exceed thirty (30) calendar days from the date of such challenge.";

- (8) adding a new paragraph (8) to read as follows:

"(8) Upon a finding by the Secretary under paragraph (7) that a vote was improperly cast or that a Council member was improperly precluded from voting, and a finding that the vote in dispute would have resulted in a different action by the Council, the Secretary shall require the Council to reconsider and vote upon the action consistently with the Secretary's determination."

JUDICIAL REVIEW

SEC. ____ REVIEW OF COUNCIL ACTION. -- Subsection 305 (b) (1) of the Magnuson Fishery Conservation and Management Act (Public Law 94-265), as amended (16 U.S.C. 1855 (b) (1)) is amended by inserting, between "Act and "and", ", Council actions upon which such regulations are based,".



NATIONAL FISHERIES INSTITUTE, INC.

1525 WILSON BOULEVARD • SUITE 500 • ARLINGTON, VA 22209 • 703/524-8880 • FAX: 703/524-4619

June 30, 1994

Hon. Thomas J. Manton
Subcommittee on Fisheries Management
U.S. House of Representatives
Washington D.C. 20515

Dear Chairman Manton,

The National Fisheries Institute is writing to express its strong opposition to NOAA's proposals in H.R. 4430 to impose new taxes and fees on seafood companies. These unfair proposals would impose a substantial and crippling burden upon thousands of fishermen and seafood people who are struggling to survive in very difficult circumstances.

User fees can be a useful and appropriate way for NOAA officials to offset their costs of providing services. For example, we believe that it is appropriate for NOAA to collect fees to recover its costs of providing seafood inspection services, statistical reports and nautical charts.

The nexus between the payer and the benefit received under NOAA's proposals in H.R. 4430, however, is non-existent. Instead, NOAA officials want to raise substantial general revenue for themselves without conferring any special benefit to the people they would tax.

NOAA's regulatory programs have set aside marine resources for the exclusive use of recreational fishermen, scientists and other special interest groups. NOAA's tax and fee proposals, however, unfairly single out working people to pay for NOAA's program.

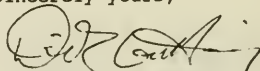
It is outrageous, for example, for NOAA officials to set aside a fishery, such as the Atlantic billfish fishery, for the exclusive use of recreational fishermen, and then ask that the same working people they have prevented from participating in the fishery should pay, while recreational fishermen should not. It is equally unfair for NOAA to punish commercial fishermen for accidentally harming an animal which animal-protection groups insist be protected, and then ask that only commercial fishermen should pay for the regulations which are being used against them.

Import taxes on fishery products already provide NOAA with more than \$50 million each year. Many additional millions of

dollars in are paid to NOAA and state fishery agencies by fishermen and seafood firms in special fees and taxes. No other constituent group contributes more financially to NOAA than the U.S. fish and seafood industry.

We are pleased that during yesterday's hearings many members of your subcommittee expressed opposition to NOAA's tax and fee proposals. We hope that they will not be included in any bill approved by your subcommittee.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Richard E. Gutting, Jr.", with a stylized flourish at the end.

Richard E. Gutting, Jr.
Vice President -
Government Relations

cc: Fishery Management Subcommittee
Doug Hall



Libby Hill Seafood Restaurants, Inc.

4617 W. MARKET ST.
GREENSBORO, NORTH CAROLINA
27438

P.O. BOX 5091
(910) 294-0505
FAX 910-292-6005
NC WATS 1-800-452-2071

Honorable Howard Coble
U.S. House of Representatives
403 Cannon House Office Building
Washington, DC 20515-3306

Howard:

Being in the seafood business to the extent that we are, I have been very interested in two pieces of legislation this summer; these being the Clean Water Act and the renewing of the Magnuson Act. Both could have considerable effect on the way we conduct our business.

Today was the first day we have begun to hire for our restaurant in Lynchburg, VA. The fifty or so jobs will bring us to just over 900 employees. Today, I received word that the House Fishery Management Subcommittee was considering a fee or tax on the raw materials we purchase.

Part of the thought in the congressional thinking today is that we, as business people can pass these fees/taxes along to the consumer. It just is not so. Competition is so strong on the food dollar today that oftentimes, to maintain market share, these costs must be absorbed in diminished margins.

Of the fifty or so years our family has been in the seafood business, I cannot think of a time with more concern over the future of our industry. Supplies continue to dwindle while prices continue to escalate. Other proteins such as chicken, turkey, beef, and pork have either remained stable or have diminished. We continue to build units and hire people in the hope that rational thinking will prevail and that we will once again look at the ocean as a source of food and not so much as a place to hide our waste.

I sincerely appreciate the positive experience Justin had working with you and your staff this summer. This will truly be a summer that he will never forget. He has requested that we let him transfer to Georgetown University for next year. But his mother and I think that graduate school will be soon enough.

Sincerely,

Marshall L. Conrad
President

MLC:pcf



MAINE SARDINE COUNCIL

Industry Development, Quality Control, Promotion,
Research, and Statistical Activities Since 1951
Telephone: (207) 989-2180

470 North Main Street, P. O. Box 337,
Brewer, Maine 04412-0337
Fax: (207) 989-2154

July 8, 1994

The Honorable Thomas Manton
Chairman
Subcommittee on Fisheries Management
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Manton:

I am writing to provide you with the views of the Maine Sardine Council and the Associated Fisheries of Maine on a number of issues which have been raised as Congress has considered the reauthorization of the Fisheries Conservation and Management Act in recent months. During this time, I have also been reviewing these issues as a member of the National Fisheries Institute's (NFI) fisheries management subcommittee. I know that NFI's comments have already been provided to your subcommittee. The Maine Sardine Council is in strong support of NFI's reauthorization positions.

As you know, the Administration only shared their reauthorization ideas with the public last month. I now feel that we must communicate to you in haste as the rumors out here have it that final FCMA action may occur before next month's Congressional recess. For this reason, in order to provide you quickly with the views of the AFM, I am enclosing a copy of my April 25 memo to the NFI subcommittee in behalf of the Association. The positions outlined in this memo were endorsed by the AFM membership at our May 18 meeting.

Issues of importance to the membership of the Associated Fisheries of Maine include:

- * User fees
- * Limited entry/ITQ requirements
- * Bycatch
- * Prohibiting future directed foreign fishing
- * Prohibiting future consent decrees
- * Highly migratory fisheries
- * Efficiency in the utilization of fisheries
- * Habitat conservation



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The Honorable Thomas Manton, Page 2

July 8, 1994

- * NMFS advisory guidelines
- * Council member conflicts of interest
- * Successors to council members
- * Secretarial disapproval of council nominees

In addition to our support for the broad views of the AFM and NFI, the Maine Sardine Council is seeking two specific FCMA amendments which will help to ensure the sustainable development of the herring resources of the Gulf of Maine, Georges Bank, and Southern New England by American fishermen and fish processors.

As a member of the "O TALFF Alliance", we are in support of a five year moratorium on directed foreign fisheries for mackerel and herring on the East Coast. This position would not eliminate U.S. joint venture opportunities for herring once a federal management plan is in place. Regional herring IWP activities during the past few years have demonstrated that JV's without TALFF are, indeed, possible.

We also are in strong support of amending the act to allow councils to make fisheries allocations to processors - not only to offshore processors as current law clearly allows - so that, on a fishery-by-fishery basis, this possibility may be debated as domestic allocation policy develops around the country.

During preliminary discussions about federal herring management as a potential ITQ fishery more than two years ago, it became clear to us that the act now discounts the processing sector's historic fisheries development investments to the benefit of fishermen and processors at sea. No matter what an individual's position on this idea may be, it is difficult to argue against amending the act so that the option may be discussed in the councils. It is our understanding that the office of the General Counsel of the National Oceanic and Atmospheric Administration has determined that processor allocations are not allowed by the FCMA today.

I am enclosing a paper on this idea which has been written by Joe Plesha, of Trident Seafoods, and may be of interest to you and your staff. It is an excellent piece of work which is hard to argue with.

Our suggestion is that the definition of the term "fishery" be amended to read, at (B) "any fishing for or processing of such stocks". Section 303(b)(6) - "Discretionary Provisions" may then have to be amended accordingly. It may also be necessary to add

The Honorable Thomas Manton, Page 3

July 8, 1994

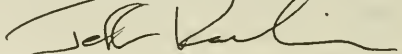
"and United States fish processors" to the language found at Section 301(a)(4).

The NFI's fisheries management subcommittee and government relations committee is supporting this change to the FCMA - even though it has spawned some controversy. The membership of the AFM is aware of our initiative in this area and we know of no opposition to the change. Please provide us with the opportunity to fully debate rational domestic allocation policy in future years.

Thank you for the opportunity to make our views on this important piece of federal legislation known to you. We look forward to continuing our work with your staff and will provide you with any additional information that you may need.

With best regards,

Sincerely,
MAINE SARDINE COUNCIL



Jeffrey H. Kaelin
Executive Director

Enclosures

cc: Congressman Tom Andrews
Congresswoman Olympia Snowe



ASSOCIATED FISHERIES OF MAINE

205 Washington Street
Brewer, Maine 04412

NFI
+ rulings

JKR 6/94

DATE: May 6, 1994
Phone (207) 989-8304
FAX (207) 989-8382

TO: Members, Associated Fisheries of Maine
FROM: Jeff Kaelin, for the Government Relations Committee

RE: Association Comments on the Congressional Reauthorization of the Magnuson Fishery Conservation and Management Act

Interested members had the opportunity to review a National Fisheries Institute memorandum on issues regarding the reauthorization of the MFCMA at the April 13 Association meeting.

Since January of 1993, a subcommittee of Association members have been developing comments for Congress on this issue.

On Monday, April 25, I provided the attached memo to other members of NFI's fisheries management subcommittee during the NFI spring board meeting in Jacksonville, Florida.

At that meeting, the NFI board modified NFI's policy regarding user fees by adding another criteria that calls for any user fee to provide additional funding for fishery programs and not to be used to offset existing funding (an AFM suggestion). The board also voted to support a National Standard to require management plans to consider avoidance of unnecessary waste and to utilize fishery resources to the fullest extent practicable (this approach fits the Association's position on the issue of bycatch and was designed as a defensive strategy to avoid environmentalists' call for a goal of zero bycatch - an industry meeting on the issue of bycatch will be held by the NFI within the next few weeks). Finally, the board approved an amendment to allow regional councils to consider allocations of quotas to processors, as well as harvesters, when designing any ITQ scheme (a Maine Sardine Council request).

This memo is intended to serve as the basis for the Association's comments on MFCMA reauthorization to the Congress. We should anticipate that final action on this legislation could occur this summer now that the Marine Mammal Protection Act amendments have been finalized.

Now is the time for your final comments to be relayed to me concerning this issue. Our next meeting is scheduled for May 18 - at that time, this issue should be put to bed. Until then, please call me at 989-2180 with your comments.



ASSOCIATED FISHERIES OF MAINE

205 Washington Street
Brewer, Maine 04412

Phone (207) 989-6304
FAX (207) 989-6392

DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT - DRAFT

DATE: April 25, 1994

TO: Members, National Fisheries Institute's Fishery Management Subcommittee

FROM: Jeff Kaelin; for the Associated Fisheries of Maine (AFM)

RE: Magnuson Fishery Conservation and Management Act Reauthorization Issues and Comments

Members

Americold Corp.
Atlantic Trawlers
Camden National Bank
Charles M. Cook Inc.
Dee Dee May II Inc.
Kagan David Drew
Ete Paperboard Products
Farm Credit of Southern Maine
Fleet Bank
Fishing Gear Imp
Gille & Angley
Great Eastern Mussel Farms
Gulf Crest Trawlers Inc.
High Chaparral Inc.
Island Wide Marine Agency
Jordan-Maritime Industries
Lover's Fisheries Inc.
Maine Commercial Fisheries
Maine Fishermen's Cooperative
Maine Gillnetters Association
Maine Lobster Association
Maine Seafine Council
Mary Ellen-Louise G. Inc.
Mill Cove Lobster Pound Inc.
New England Fisheries Cooperative
North Atlantic Inc.
Oak Island Fisheries Inc.
F. J. O'Hara & Sons Inc.
Orion Inc.
Pendle Inc.
Port Clyde Canning Co.
Portland Fish Exchange
Quahog Lobster Co.
Resource Trading Co.
Sebasteo Wharf Inc.
Seatrade International Co.
Pocahontas Inc.
Southworth-Milton Inc.
Stinson Seafood Co.
TRI Fish Co.
Vessel Services Inc.
Nicholas H. Walsh Esq.
Roger F. Woodman Jr. & Co.
Wolton Lobster Co.

These comments are derived from a series of meetings of the AFM's ad hoc fisheries management subcommittee held since January, 1993. Since all AFM subcommittee members - and regular association members - have not had an opportunity to review this latest compilation of ideas before today's meeting, please consider this a draft memo.

While I do not anticipate any serious disagreement with these comments from within our organization, I will provide NFI subcommittee members with any appropriate revisions as soon as possible.

These comments are loosely ordered, based on the agenda for today's meeting and the specific questions posed in the "Fishery Management Reform" issue paper.

####

USER FEES:

Position:

The AFM has consistently opposed new federal fisheries management user fees. Because a serious lack of scientific research and enforcement resources is hampering the full implementation of the MFCMA today however, the AFM is willing to consider fees only if adequate safeguards can be created which ensure a dedicated use of the money raised.

Rationale:

Historically, the AFM has opposed user fees for fisheries management because we have rejected the theory that the fishing

industry should directly bear the costs associated with management because the industry is the direct beneficiary of the harvest of the living marine resources being managed. The harvest of these resources is of national benefit - the investment in this harvest being the appropriate cost which the industry should bear. We maintain this view today.

Mechanically, we are very concerned that revenue raised for fisheries management through federal user fees would not represent new money but would simply be substituted for existing appropriations in the Congressional budget process. Also, as a general principal, we believe that any state or federal user fees must be dedicated solely for the purposes for which they may be raised.

While this "dedicated revenue" approach has worked reasonably well in Maine - commercial fishing industry members have agreed to license fee increases to pay for a greater marine resources management enforcement presence, for example - we have little confidence that the federal government can deliver a fee-for-services fisheries management program which can assure the taxpayer that the funds raised will be used only for their designated purpose.

According to Dick's Gutting's April 4 memo, the NFI will "(c)ontinue to oppose new federal fishing fees unless: (1) they are used in funding fisheries research on the fisheries in areas in which they were collected; (2) they are collected and spent in a manner which does not subject the funds to the congressional appropriations process; (3) the persons paying the fees determine how the funds are spent; (4) existing state and federal fees are treated as a credit for payment; and (5) fees be collected from all users.

Recognizing that inadequate federal funding for fisheries enforcement and research-in-support-of-management are retarding the ability of the MFCMA process to work as Congress intended, we support these qualifications being imposed upon a user fee program. In addition, however, the subcommittee should consider adding another - stating that "revenue raised through federal fishing fees must represent an enhancement of fisheries management funding with Congress committing itself to this requirement".

MARINE CONSERVATION NETWORK:

While the general tone of the Marine Conservation Network's rationale for proposed amendments to the MFCMA purport to promote the interests of the U.S. commercial fishing industry, they - in fact - promote a serious weakening of the influence that the industry has on the process today.

For this reason, we do not take the entire proposal seriously. Our MFCMA comments do touch on several issues raised by the Network, however. Generally, the AFM does not believe that the MFCMA is broken nor do we support significant tinkering with it.

PRECAUTIONARY REQUIREMENTS:

It is not at all clear what these would be. Overfishing is being defined in fisheries management plans in the New England region today. There will always be differences in interpreting this standard. Our understanding of how to manage this fisheries management system is very limited. Insufficient federal and state scientific research and enforcement efforts hamstringing the process today.

The fishing industry catches fish for food or other social value. The burden of proof on the adequacy of the MFCMA fisheries management process must rest in a partnership between industry and government - not on industry alone.

A precise definition of "conservative biological assumption" is impossible.

The overfishing definitions referred to above are, themselves, conservative assumptions. The organic MFCMA process continues. As we become smarter, we manage better.

The AFM is opposed to establishing new, undefinable standards in the Act believing that the MFCMA now promotes the sustainability of our fisheries resources.

LIMITED ENTRY OR INDIVIDUAL QUOTA SYSTEM:

For many years, efforts to amend the MFCMA to allow for the implementation of limited entry schemes without Council support have been sensibly defeated.

Far reaching decisions like the implementation of an ITQ system can not be effectively imposed from the top down - they must be developed from the bottom up.

The AFM opposes amending the MFCMA by transferring this authority with the Secretary.

BYCATCH:

The AFM supports the development of fishery management plans that promote the retention and utilization of "unutilized" bycatch or non-directed catch.

New England's experience with quota management in the

groundfish fishery, for example, made clear that the highgrading practices which resulted were exceedingly wasteful. Amendments to the region's multispecies plan later favored a closed area, minimum fish size, and minimum mesh size approach to promote the better utilization of non-directed catch. Amendments to the MFCMA were not necessary for this understanding and goal to evolve within the New England council.

We do not support Mr. Murkowski's S. 1756.

S. 1756's "non-wasteful" standards are indefinable. It would statutorily limit the full commercial utilization of non-directed catches which, in itself, would promote waste. The continuing development of alternative, unutilized species would be stopped. This process reduces fishing pressure on traditionally harvested, stressed stocks. The bill also creates new standards for Council's to adhere to without providing additional staff and research capabilities to them.

INTERSTATE FISHERY COMMISSION PROPOSAL:

No comment at this time.

NORTH CAROLINA AMENDMENT:

No comment at this time.

####

The AFM's comments on a number of other MFCMA amendment proposals and issues follow:

PROHIBITING FUTURE DIRECTED FOREIGN FISHING:

The AFM supports the elimination of any future directed foreign fishing in the U.S. EEZ, recognizing that these allocations work to limit the U.S. industry's efforts to market these fisheries products globally.

It is important to understand that this proposed amendment would not restrict joint venture allocations to foreign nations, utilizing domestic fishermen, when the domestic processors' capacity is insufficient to utilize all of the harvested resources. Joint venture allocations, however, should be tied directly to export market access when appropriate.

PROHIBITING FUTURE CONSENT DECREES:

The AFM supports amending Sec. 305(d) by adding "The Secretary shall not enter into nor otherwise consent to any agreements for or pertaining to the preparation of a fishery management plan, an

amendment to the plan, or a regulation, and shall not maintain nor continue any such agreement or consent".

Secretarial "consent decrees" create a divisive, litigious process regrettably transferring fisheries management policy development from the Councils to the Courts.

Also → ~~ADD~~ See 305 (b)(1) re: Gillis 5/25/94
HIGHLY MIGRATORY FISHERIES MANAGEMENT:

NMFS has threatened to reduce U.S. harvests in highly migratory fisheries below those levels negotiated with other nations in ICCAT. The agency wrongly interprets the MFCMA's terms "allocation or quota" to exclude the "fishing mortality levels" adopted by ICCAT for north Atlantic swordfish harvests.

Consequently, the AFM supports amending the references to allocations or quotas in Sec. 304(f)(3)(E) of the MFCMA by adding the term "fishing mortality levels".

Also, fishery management plans for Atlantic highly migratory species are being prepared without adequate public participation.

The AFM supports amending the MFCMA to direct the Secretary to establish planning teams, made up of members of the ICCAT Advisory Committee or species management groups, to assist in plan development.

Sec. 304 of the MFCMA should be amended to include a new subparagraph (G) - with the existing subparagraph (G) becoming (H) - to read as follows:

"The Secretary shall establish a planning team for each fishery management plan to be prepared under this paragraph composed of not less than seven members of the ICCAT Advisory Committee or species working groups established under the Atlantic Tunas Convention Act who are knowledgeable and experienced with the fishery concerned. Members of such teams shall be appointed by the Secretary for a term of three years, shall be eligible for reappointment, and shall receive no compensation except the Secretary shall reimburse them for any necessary expenses. Teams shall prepare draft plans and plan amendments which the Secretary shall review and consider before proposing plans or amendments under this paragraph."

The words "planning team" should be listed after "Councils", in Sec. 302 (j)(1) to exempt these advisory bodies from the Federal Advisory Committee Act.

EFFICIENCY IN THE UTILIZATION OF FISHERY RESOURCES:

Much discussion has occurred about the meaning of this goal of National Standard 5.

The AFM supports amending this national standard, adding the phrase "nor should any measure significantly undermine the value of traditional owner-operator fisheries" at the end.

HABITAT CONSERVATION:

The AFM supports strengthening the MFCMA's habitat conservation mandate. We support the NFI's proposal that fishery management councils should identify ~~critical~~ ^{essential} habitat, and significant threats to critical habitat, in fishery management plans. We also support requiring appropriate state and federal agencies to consult with the Councils and the Secretary - if requested to do so - concerning any proposed action that would adversely impact critical marine fisheries habitat.

NMFS ADVISORY GUIDELINES:

The AFM opposes amending the MFCMA, at Sec. 301 (b), to give Secretarial advisory guidelines the force and effect of law.

COUNCIL MEMBER CONFLICTS OF INTEREST:

It is essential that fishing industry representatives continue to be appointed to the fishery management councils.

Council appointees today are required by law to file a conflict of interest declaration with the federal government. It is the experience in the New England council that members regularly excuse themselves from voting on issues which could be perceived as creating a conflict of interest.

Unfortunately, the experience of one or two councils has led to a public perception that conflicts of interest of Council members make it impossible for Councils to propose regulations that support the sustainability of marine fisheries resources.

We support the NFI suggestion that each Council should develop and engage their own procedures for eliminating the opportunity for conflicts in voting to occur.

SUCCESSORS TO COUNCIL MEMBERS:

Due to lengthy agency delays in filling certain New England council seats, the AFM supports amending the MFCMA to allow sitting members of the Council to continue to serve until they are replaced. We suggest an amendment to Sec. 302(B)(4) stating that "Even if a voting member's term has expired that member shall continue to serve until his successor shall be appointed".

SECRETARIAL DISAPPROVAL OF COUNCIL NOMINEES:

In recent years, the Secretary has required Council nominees to submit written fishery management philosophies which amount to a distasteful and arbitrary "litmus test" of proposed members.

The AFM supports amending Sec. 302(C) stating that "The Secretary may make a determination that an individual is not qualified only if he is found not to be knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographical area concerned."

####

We appreciate the opportunity to make these views known to the subcommittee and look forward to working with the NFI during the balance of this reauthorization process.

ATTACHMENT D

GILLIS & ANGLE
 Counsellors at Law
 Suite 227
 160 Old Derby Street
 Hingham, MA 02043

RALPH L. GILLIS
 EDWARD T. ANGLE

Telephone: (617) 740-2432
 Fax: (617) 740-0768

May 25, 1994

Facsimile Transmission

Honorable Gerry E. Studds
 United States House of Representatives
 237 Cannon House Office Building
 Washington, D.C. 20515

ATTN: Ms. Jean Flemma

RE: 1994 Amendments To Magnuson Act

Dear Congressman Studds:

Per the request of Ms. Jean Flemma of your staff, this is to suggest amendatory language for the Magnuson Act, Section 305, 16 U.S.C.A. 1855 (as amended), which would prevent the intrusion of judicial authority into Magnuson Act rulemaking under the guise of mandating equitable relief to private parties.

As you know, in Conservation Law Foundation v. Franklin, ___ F.2d. ___ (1st Cir. 1994), the United States Court of Appeals for the First Circuit ignored the statutory limitation on judicial involvement in review of Magnuson Act rulemaking, contained in Section 305(b), 16 U.S.C.A. 1855(b), through approval of a consent decree constituting a rulemaking and judicially requiring a future rulemaking.

The Court in Conservation Law Foundation writes, in pertinent part, as follows:

The decree purposefully did not admit wrong-doing on the part of the Secretary or the improper approval of amendment four. It merely mandates the creation of a new amendment, rather than the revision of an old one--amendment four. As the provisions in § 1854(c)(1)(B) related to revisions do not apply here, that section cannot be used as a shield to prevent the

Honorable Gerry E. Studds
United States House of Representatives
Page 2

May 25, 1994

Secretary from exercising her statutory discretion.
Slip Op. at 13. Emphasis Added.

The Court is correct that the Secretary may exercise her discretion in accord with the statute. The notable concern is that no statutory basis appears for judicial authority to "mandate" prospective rulemaking regardless of the Secretary's discretion. Exercise of the Secretary's discretion according to the clearly prescribed procedure in Section 304, 16 U.S.C.A. 1854, is not ripe for judicial review until reduced to a final rule under Section 305, 16 U.S.C. § 1855. In the absence of a petition to review a final rule, exercise of the Secretary's discretion presents no substantive basis for judicial action.

It is, therefore, immaterial that the complaint "sought broader relief", which is the sole basis cited by the First Circuit for the intrusion of judicial authority. What is material is the tone of the opinion in Conservation Law Foundation, which usually serves as an inverse barometer of the quality of legal argument presented. Simply put, the concerns of fishermen for proper application of the Magnuson Act's legal requirements clearly have been given a back seat to the ambitions of private interest groups focused on rewriting statutory rulemaking requirements perceived to constitute an impediment to their objectives.

The effect of the First Circuit opinion in Conservation Law Foundation is to embroil judicial authority in anticipatory Magnuson Act rulemaking, and to create a private right of action outside judicial review of final rules. The effect is made clear later in the opinion where the First Circuit writes, in pertinent part, as follows:

Appellants' last argument contends that the district court could not enter the decree because it lacked jurisdiction under 16 U.S.C. § 1855(b) of the Magnuson Act, which provides for judicial review only of regulations and certain secretarial actions. The claim is without merit. The benchmark for determining whether the court properly exercised jurisdiction is the original complaint filed by Conservation. The complaint challenged amendment four, among other things. Because the district court had jurisdiction under § 1855(b) to review amendment four, the district court could enter the consent decree because it resolved the dispute with the standards established by Local 3, 478 U.S. 525-26. Slip Op. at 16-17. Emphasis added.

Honorable Gerry E. Studds
United States House of Representatives
Page 3

May 25, 1994

Notably, in the above language, the Court claims jurisdiction under § 1855(b), but in the first above quoted language the Court says that the provisions of § 1855(b) do not apply here. In doing so, the above language patently creates a private right of action beyond the statutorily set limited judicial review of final rules, contained in Section 305, 16 U.S.C. § 1855.

Limited judicial review, as specified in § 1855(b), is based on final agency action. In the absence of a final rule, there is nothing ripe for judicial action under the Magnuson Act. No other judicial action is authorized by the Magnuson Act, and no citation is made by the First Circuit to any other statutory language. Section 305, 16 U.S.C. § 1855, cannot be used to grant prospective relief beyond the Magnuson Act's statutorily set judicial review authority. But that is precisely what the opinion in Conservation Law Foundation effects.

Even the cited case of the above quote, Local 93, requires that a consent decree be in compliance with the law, and the law of § 1855(b) would only enable remand to the Secretary of an improper council-developed regulation for transmittal by the Secretary to the council for further action.

The future exercise of independent Secretarial rulemaking authority is not ripe for judicial action until reduced to final agency action within the meaning of § 1855(b). Hence the Court had no jurisdiction to act mandating the adoption of a new regulation (Amendment No. 5) regardless of the complaint, and the First Circuit is in error; i.e., the complaint does not set the scope of available relief on a petition for review from administrative action. That scope is set by the involved statute, which apparently needs to be clarified.

Based on the foregoing, we submit the following new language for your consideration as an amendment to Section 305(b), 16 U.S.C. § 1855(b). This amended is suggested for insertion as a new last paragraph to Section 305(b)(1), and reads as follows:

"(b) Judicial Review

(1)

* * *

No judicial relief shall be granted to any petitioner or complainant pertaining to any regulation or to the adoption of any regulation, except as such regulation has been rendered final and implemented under subsection (a) of this Section and then only to the extent authorized by this Section on petition for review and not otherwise."

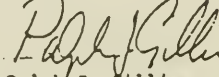
Honorable Gerry E. Studds
United States House of Representatives
Page 4

May 25, 1994

As always, your support for the concerns of the fishing community are very much recognized and appreciated.

With kind regards,

Sincerely,


Ralph J. Gillis

RJG/wp

Copies: Ray Ross, President
Massachusetts Inshore Draggermens' Association, Inc.
James McCauley, President
Point Judith Fishermens Cooperative Association, Inc.
Fred J. Mattera, President
N.E. Swordfish Net Association, Inc.
James Warren, Executive Secretary
Associated Fisheries of Maine

The Magnuson Act, 90 Stat. 331, is amended in Section 305(d) by addition of the following at the end thereof:

The Secretary shall not enter into nor otherwise consent to any agreements for or pertaining to the preparation of a fishery management plan, an amendment to a plan, or a regulation, and shall not maintain nor continue any such agreement or consent.

The Allocation of Individual Transferable Quotas to Investors in the Seafood Industry of the North Pacific

By Joseph T. Plesha

A. IMPACT OF PRIVATIZATION OF FISHERY RESOURCES ON INVESTORS IN THE INDUSTRY

1. *Investments Made in the Open Access Fishery*

During the 1980's the domestic seafood industry was strongly encouraged to invest in the groundfish fisheries of the North Pacific. Promotion of "Americanization" was accomplished through the Magnuson Act's preferential fishery allocation to the domestic industry, the "fish and chips" policy of fishery allocations to foreign nations, Federal government guaranteed loans and tax deferrals, and State of Alaska raw fish tax rebates. With this impetus, investments were made in an open access fishery management regime and the major groundfish species became fully utilized by the domestic seafood industry. The North Pacific Fishery Management Council is now considering privatizing the fishery resources off Alaska with implementation of an Individual Transferable Quota ("ITQ") system.

There are two basic types of investments made in the primary production of seafood; investments in harvesting capacity and investments in processing capacity.¹ To follow is a hypothetical example to help demonstrate some of the impacts an ITQ system will have on the existing investors in the open access fishery.

The first chart is a basic industry profile showing the hypothetical operating characteristics of each sector and the characteristics of the fishery they prosecute.

Basic Production Profile

1. <i>Fishing Vessels</i>		
Vessel Cost		\$5,000,000
Annual Capital Cost		\$500,000
Annual Depreciation		\$500,000
Variable Cost (\$/mt)		100
Catch Rate (mt/day)		68.5

¹ Fish are highly perishable before being processed into a primary product. Investors in fishing vessels and primary processing capacity have made those investments based on the requirement that fish be handled quickly, i.e. these investors have invested in the "race to fish" caused by the open access fishery management regime. Investors in secondary processing of seafood, on the other hand, have not made their investments based upon the "race to fish" caused by open access. Secondary processors have not overcapitalized as a result of the existing management regime and will not be adversely impacted, therefore, by the privatization of fishery resources. Being that secondary processors are consumers of processed seafood, their investments may benefit if the utilization of fishery resources is increased through privatization.

2.	<i>Processing Plants</i>	
	Plant Cost	\$50,000,000
	Annual Capital Cost	\$5,000,000
	Annual Depreciation	\$5,000,000
	Variable Cost (\$/round mt)	\$100 (Excluding fish cost)
	Processing Rate (mt/round weight)	685
	Product value (\$/round weight equivalent mt)	\$400
3.	<i>Annual Harvest (mt)</i>	1,000,000

The fishing and processing operations shown above would reach an open access equilibrium in a 1,000,000 mt a year fishery with 100 fishing vessels delivering to 10 processing plants in a 146 day per year fishing season. The following table shows the operating characteristics of that open access fishery in an equilibrium condition.

Open Access Equilibrium Condition

1.	<i>Fishing Vessels — 100</i>	
	Income	
	1,000,000 mt harvest @ \$200/mt	\$200,000,000
	Costs	
	Variable Costs	\$100,000,000
	Capital Cost	\$50,000,000
	Depreciation	<u>\$50,000,000</u>
	Total Cost	\$200,000,000
	Net Revenue	\$0
2.	<i>Processing Plants — 10</i>	
	Income	
	1,000,000 mt harvest @ \$400/mt (round weight equivalent)	\$400,000,000
	Costs	
	Fish Cost	\$200,000,000
	Variable Processing Cost	\$100,000,000
	Capital Costs	\$50,000,000
	Depreciation	<u>\$50,000,000</u>
	Total Cost	\$400,000,000
	Net Revenue	\$0

2. *Benefits of Privatizing Fishery Resources*

Under open access equilibrium, shown above, both sectors are covering all costs, yet neither sector is earning economic rent from the resource. (Note: Individual operators may, of course, be receiving quasi-rents because of their fishing skills, plant locations or marketing skills, etc..) From the viewpoint of society as a whole, the fishery may be utilized just as effectively by 40 vessels delivering to 4 processing plants, 365 days of the year. This would result in the elimination of 60% of the capital and depreciation costs, for an annual savings (over the open access equilibrium) of \$120,000,000. The 1,000,000 metric ton fishery would generate, then, \$120 per metric ton of economic rent.

Private Property Equilibrium Condition

1. <i>Fishing Vessels — 40</i>		
Income		
	1,000,000 mt harvest @ \$140/mt	\$140,000,000
Costs		
	Variable Costs	\$100,000,000
	Capital Cost	\$20,000,000
	Depreciation	<u>\$20,000,000</u>
	Total Cost	\$140,000,000
	Net Revenue	\$0
2. <i>Processing Plants — 4</i>		
Income		
	1,000,000 mt harvest @ \$400/mt (round weight equivalent)	\$400,000,000
Costs		
	Fishing Rights	\$120,000,000
	Fish Cost	\$140,000,000
	Variable Processing Cost	\$100,000,000
	Capital Costs	\$20,000,000
	Depreciation	<u>\$20,000,000</u>
	Total Cost	\$400,000,000
	Net Revenue	\$0
3	<i>Quota Holder Income</i>	\$120,000,000

A comparison between open access equilibrium and private property equilibrium conditions show the benefit that is expected from fishery privatization. In an open access fishery, society receives \$400,000,000 worth of fishery products in exchange for \$400,000,000 worth of resources. In a private property fishery, society receives \$400,000,000 worth of fishery products in exchange for \$280,000,000 worth of resources. In the example above, all of the societal benefits are captured by the ITQ quota holders. (In reality, the government would impose a tax on at least a portion of those rents.)

3. *Impacts of Privatization on Existing Investments.*

The potential benefits of privatized fisheries have been frequently studied. There has been little serious examination, however, of the economic impacts on existing investments in the industry during the transition between open access and privatized fisheries. In a heavily overcapitalized fishery that is capital intensive, and where that capital is both relatively durable and specific to the fishery involved, the owners of that capital should expect significant losses during the transition between the open access and privatized fishery equilibrium conditions.

In this hypothetical example, I have assumed that the quota holders neither harvest nor process fish, but instead contract for these services separately. (The results would be the same, however, no matter which group held quota.) I also assume that there are no alternative uses for either the fishing vessels or the processing plants. While this may be very nearly true for pollock processing plants, fishing vessels may have some alternative uses, such that their opportunity cost more closely approaches the actual earnings they receive from fishing pollock.

A holder of quota would have to contract with a fishing vessel owner to have that quota harvested. Under open access equilibrium 100 boats delivered to 10 plants 1,000,000 mt of fish in a 146 day season. This would mean that immediately after the fishery is privatized, the fleet would be capable of harvesting at 2.5 times the rate necessary to harvest the quota. Under the initial privatization of the fishery, there would be two and one half boats competing for one fishing position. The fishing fleet would likely bid the price down from the average costs (\$200/mt) to something very close to the variable cost (\$100/mt).

The same is true for processing services. The oversupply of processing plants will cause this group to bid up the price of delivered fish to the point where it equals the value of the finished product minus the variable processing costs (\$400 - \$100 = \$300/mt). The quota holder is therefore able to generate \$200 in net revenue from each metric ton of fish, or approximately \$80 per metric ton more than the quota holder will be able to generate when the fishery reaches the private property equilibrium state.

This \$80 per metric ton is a transfer from the owners of the capital investments in the vessels and plants to the quota holders. In effect, immediately after the ITQ system is in place, the owners of quota receive, along with the fishing rights and the corresponding economic rent from the fishery, the right to use other peoples property for free!

Open Access to Private Property Transition Period Disequilibrium

1. <i>Fishing Vessels — 100 (Initially)</i>		
Income	1,000,000 mt harvest @ \$100/mt	\$100,000,000
Costs		
	Variable Costs	\$100,000,000
	Capital Cost	\$50,000,000
	Depreciation	<u>\$50,000,000</u>
Total Cost		\$200,000,000
Net Revenue		(\$100,000,000)

2. <i>Processing Plants — 10 (Initially)</i>		
Income		
	1,000,000 mt harvest @ \$400/mt (round weight equivalent)	\$400,000,000
Costs		
	Fish Cost @ \$100/mt	\$100,000,000
	Fishing Rights @ \$200/mt	\$200,000,000
	Variable Processing Cost	\$100,000,000
	Capital Costs	\$50,000,000
	Depreciation	\$50,000,000
	Total Cost	\$500,000,000
	Net Revenue	(\$100,000,000)
3. <i>Quota Holder Income</i>		\$200,000,000

Investors in processing plants and fishing vessels will suffer enormous losses during the transition between open access and private property fisheries. These losses reflect the fact that they can no longer expect to receive any return on that portion of capital in excess of the amount "appropriate" for the fishery in question. They also cannot expect to receive any return on that portion of capital that is appropriate until such time as all the "excess" capital has either left the fishery for other employment or simply becomes worn out.

I have tried to quantify the loss that may be suffered by investors of capital in our hypothetical example. The loss to investors as a result of the change from an open access to a privatized fishery is estimated by taking the initial (open access) investment value, the portion of the capital that is appropriate for a privatized fishery and the point in time when the owners of the capital can expect to begin to receive a return on the "appropriate" portion of capital.

In the hypothetical example, the total value of investments under open access is assumed to be \$1,000,000,000, and the portion of the capital that is appropriate to prosecute the resource in a private property fishery was assumed to be 40%. In order to estimate the time period after which investors can expect to begin to receive a return on the appropriate portion of capital, I assume that none of the capital leaves the fishery for other employment and that 10% of the original capital is consumed each year. In that 60% of the capital is in "excess" of the appropriate amount needed to efficiently utilize the resource, the transition period from an open access equilibrium to a private property equilibrium is six years (if you assume 10% of the capital wearing out each year).

At a ten percent discount rate the \$1,000,000,000 initial capital that vessel and plant owners invested in the open access fishery will have a net present value of only \$225,789,972 when the fishery is privatized.²

² NPV after privatization = \$1,000,000,000 x 40% x $[1/(1+10\%)^6]$ = \$225,789,972.

B. NEED FOR ALLOCATIONS OF ITQ TO BOTH SECTORS OF THE INDUSTRY.

1. *Rationale for Allocations to Investments Made in the Seafood Industry*

The only reason for giving allocations of ITQ to participants in the seafood industry at all (as opposed to the general public) is as a reward for prior investments of capital in the open access fishery, or as compensation for the decreased value that capital investments will suffer when the fishery is privatized. With either rationale, however, there is no basis for awarding allocations of ITQ to investments in the harvesting sector and not the processing sector.³

In the above hypothetical example, investors of capital in an open access fishery lose over 75% of the value of their investments. Under the current proposals being examined by the North Pacific Council, investors in fishing vessels are compensated for this enormous loss by the receipt of ITQs. There is no reason why investors in processing capacity should not also be compensated for the loss in value of their investments.

2. *Legal Considerations*

The Magnuson Act states that in establishing a system for limiting access to the fishery the council and the Secretary must take into account the "present participation in the fishery" (16 USC §1853(b)(6)(A)). It is clear that this provision would require that the impact of any ITQ allocation on the processing sector also be considered before initial allocations are made. Congress would otherwise have stated that establishment of a limited access system need only consider participation by "fishing vessels" in the fishery, or some other more narrowly drawn requirement.

The Secretary of Commerce cannot be arbitrary and capricious in the awarding of ITQs. There is no rationale for allocating ITQs to investors in fishing capacity and not processing capacity. The one reason that has been expressed for allocating ITQs to only fishing vessel owners is that, under an open access system, the fish become "privatized" when they are first harvested. Therefore, the argument goes, ITQs should be initially allocated to the fishing vessel. This argument is nonsense. Nothing further need be said than that the fishing vessel (or its owner) does not own the fish when they are harvested—the fishery permit holder owns the fish. Even in the case of factory trawlers, who process their own catch, technically the permit holder transfers ownership of the harvested fish to the vessel for processing. The permit holder typically has no ownership interest in the vessel, but instead is an employee of the owners of the vessel. Further, the initial distribution of ITQs allocate the economic rent from the fishery resources, not just fish. There is no argument which rationally would allow allocations of rent to one segment of capital investment in the industry, but exclude another sector of capital investment in the industry. It would be just

³ Even an auction of the resource to the highest bidder would not compensate those who have invested capital in an open access fishery only to have the value of that investment greatly decreased through privatization.

as rational to give the allocation of ITQs to owners of red painted vessels only, instead of the owners of vessels painted any other color.

It has also been said that allocations of ITQ have been made only to fishing vessel owners because of political expediency or, more appropriately stated, because of some social benefits. There may arguably be social benefits from lifestyle fisheries where the vessel owner is the master of the vessel and there is a community infrastructure built around the the skipper/owner returning home to his family after each fishing trip. But the groundfish fisheries of the North Pacific are different. The vast majority of the investments in groundfish fishing vessels (whether it be a factory trawler or inshore harvester) have been made by individuals who do not work on the vessels. Most of the capital that was invested in these fishing vessels was for the purpose of securing a potential return and was not invested as a means of assuring employment or a specific fishing lifestyle.

There is also a Fifth Amendment "taking" issue if the allocation of ITQs is given only to the owners of fishing vessels. It may seem odd to allege a taking when the government is creating private property from a common property resource; however, taking may result from non-acquisitive regulations. The State and Federal governments strongly encouraged investment in the processing sector, even to the extent of guaranteeing loans to build processing facilities. Clearly the economic impact of ITQs being allocated only to owners of fishing assets will be devastating to the value of processing plants in Alaska. Not only would the value of capital investments be diminished under an ITQ system, but a portion of the economic rent from that capital is appropriated by the recipients of the fishing quotas. There is not a wide variety of the public benefitted by the adoption of an ITQ system and, in fact, the beneficiaries are easily identified as the quota holders. The public good is not served in any apparent reason by giving the economic value of the resource to one sector while excluding another.

MEMO

MAY 9, 1993

TO: MARCUS HARTLEY

FROM: JOE PLESHA

RE: BIDDING UP THE PRICE OF FISH TO COVER ONLY VARIABLE COSTS

I've been trying to think about whether, in the event that all pollock quota shares were allocated only to harvesters, shorebased processors would bid up the price of pollock to the point where they covered only their variable costs during the time period between open access and privatized equilibrium conditions.

Currently there are 6 inshore pollock processing plants operating in the Bering Sea. These processors operate about 100 days a year. Would there still be same number of processors operating at the same daily volume if there were a year-round (effectively 300 day) ITQ fishery? Obviously not. There will be disinvestment by inshore processors to reduce the amount of capital that they utilize. *There will be disinvestment because inshore processors will not be receiving a market rate of return on their capital investments*, i.e. inshore processors will likely cover all of their variable costs, but not all of their capital costs. If the inshore processors were receiving a market rate of return on their capital investments, there would be no disinvestment — no capital leaving the industry — and, by definition, the industry would not have been "overcapitalized" in the first place.

I would argue that without empirical evidence to the contrary, you would have to assume that during the transition between open access and privatized equilibrium conditions, processors will bid up the price of pollock to the point where no capital costs are being covered. An absurd example that comes to mind from high school calculus: If the entire inshore pollock fishing fleet sank except for one independent fishing vessel, certainly the shorebased processors would bid the price of that one vessel's pollock harvest to the point where only variable costs were being covered. An ITQ system where only harvesters receive quota shares is very similar.

I suppose that processors would receive quasis-rents for negotiating skills, personal relationships with individual fishermen, risks involved in marketing finished products, etc.. But it seems intuitive to me that shorebased processors would have an economic incentive to bid up the price to cover only their variable costs.

Please excuse another absurd example. Suppose that there were six individuals who had "anted" \$50,000,000 to participate in a gambling game at which each expected to receive the market rate of return on that \$50,000,000. (Capital cost.) When these six players sat down at the gaming table, the dealer announces that the rules have been changed and they are playing a different game. The dealer places a \$100,000,000 bill in an envelope and tells the six player that the \$100,000,000 will go to the highest bidder. Will any of the six players stop bidding for the \$100,000,000 at \$49,999,999 so that they can cover their capital cost of \$50,000,000? I would assume that the players will bid about \$99,999,999 for the \$100,000,000 because, although the six players may rue the day they invested

\$50,000,000 to play the game and the fact the dealer changed the rules, leaving the table with \$1 is better than going home with nothing.

It seems to me that if capital costs invested in an open access fishery were receiving a market rate of return after the fishery was initially privatized, capital would not leave the fishery and the fishery would not have been overcapitalized in the first place. Therefore, investors of capital in an open access "overcapitalized" fishery must bid against each other such that they cover only a fraction (if any) of their capital costs when the fishery is initially privatized. *I would appreciate you explaining to me why this basic premise may be wrong.*

If it is true, my theory is that: (1) It is unfair to reward one major sector of investors in the industry (harvesters) with quota shares and not the other major sector of investors in the industry (processors). (2) To make matters worse, the one sector that is not being "rewarded" with quota shares, has the value of its capital investments diminished during the period between open access and privatized equilibrium conditions.¹ (3) And finally, to make allocations of ITQs to one sector truly outrageous, the sector that does not receive quota shares has the value of its capital investments diminished because they are "expropriated" by the sector that does receive quota shares (during the period between open access and privatized equilibrium conditions).

I really think that this theory is correct. I'd be grateful if you would give it some consideration and, if it is correct, informing the Council.

¹ Actually, both investors in harvesting and processing capacity would suffer a devaluation of their capital investments. Investors in harvesting capacity, however, are being compensated with quota shares.

MEMO

NOVEMBER 3, 1993

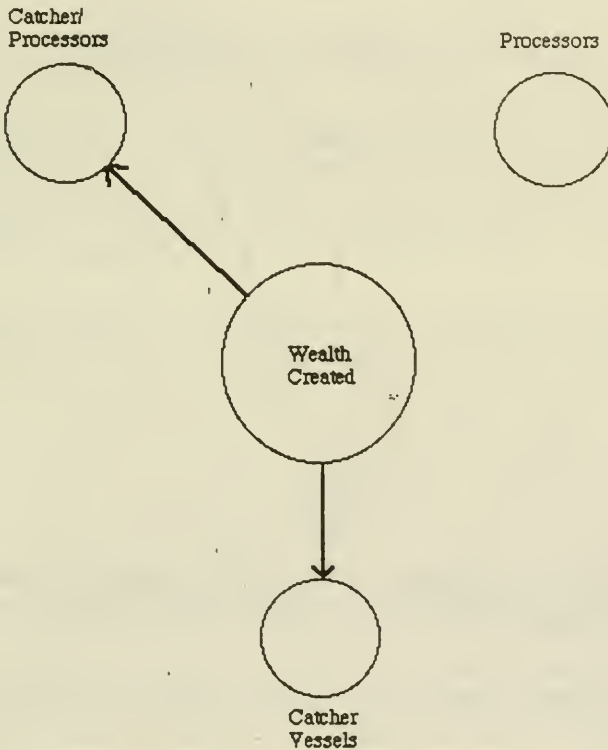
TO: SCOTT MATULICH

FROM: JOE PLESHA

RE: ITQS

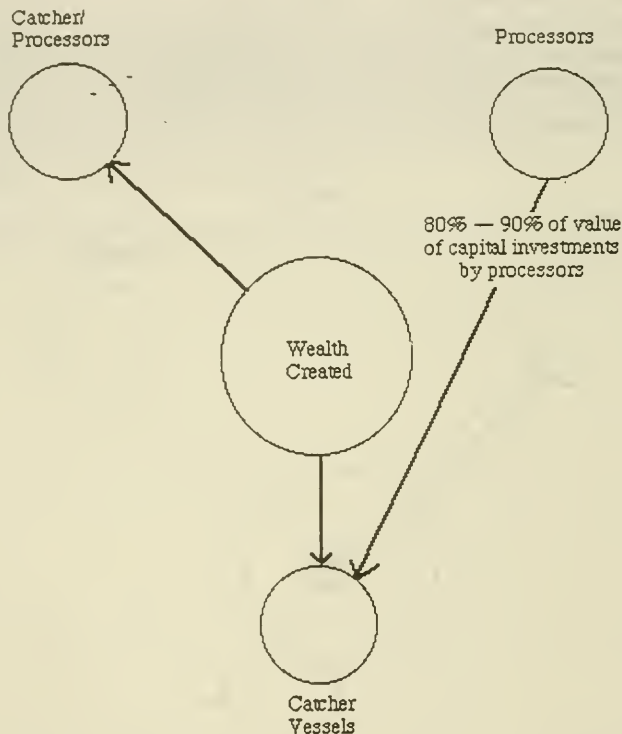
The adoption of an ITQ system will create wealth. Assuming that the allocations are made to catcher/processors and catchers only (See figure 1, below) the following questions are, too me, the most interesting: Why do you allocate to catcher/processors and catchers as opposed to society as a whole? If you allocate this wealth to catcher/processors and catchers only, what justification (rationale) do you have for excluding processors?

Figure 1



In addition, making allocations to only catcher/processors and catchers has the effect of also awarding (giving away) the investments of the processors to the catchers during the transition period between open access and privatized equilibrium conditions. (See Figure 2, below) (Note: The actual percentage of investment that processors have taken away depends upon the length of time between open access and privatized equilibrium conditions. In addition, a portion the loss suffered by investors in processing capacity is a deadweight loss, but a majority of the loss is a transfer to investors in catcher vessels as quota share holders.)

Figure 2



When I asked that you consider emphasizing the distributional aspects of your paper, it is because I believe that the above distributional argument is having, and will have in the future, a significant impact on the Council's decision of who should be allocated ITQs.

If the Council were aware that adoption of an ITQ system (that did not allocate quota shares to processors) would give investors in catching capacity enormous wealth and preclude investors in Alaskan shorebased processors from receiving any of that wealth, they would be outraged. But in addition, this allocation would also give these same investors in

catching capacity hundreds of millions of dollars of the investments made by processors. If that point were clearly articulated to the Council, it is inconceivable to me that anyone on that Council could vote to allocate quota shares to investors in catching capacity only.

To me, a paper focusing on the above problem written by a professional like yourself would be extremely powerful. Your current paper suggest the above scenario, but does not, in my opinion, focus on that issue. For example, you have a great sentence; "[t]he possibility that trade is efficient is cold comfort to processors who are deprived the value of their property and lose wealth¹ without compensation." But that statement is made in the context of political gridlock.

As you know, I am skeptical of the "relative efficiency" argument that is part of your paper. But assuming that you are correct in your position on the relative efficiency of allocations to only catchers (including catcher processors), as opposed to allocations to both catchers and processors, I still have two concerns.

1. The efficiency argument is very controversial and that controversy detracts from the powerful distributional argument.

2. It is not an issue that grabs people's attention. For example, if my boss, Chuck Brundant, were to testify before the Council that, as someone who has invested everything he ever earned in the seafood industry, he would be precluded from participating in the wealth being allocated because he chose to invest in Alaska shorebased processing (as opposed to factory trawlers and catcher vessels) *and in addition*, 90% of the value of all of his lifetime investments were being taken from him and given to those same people who invested in catcher vessels, there wouldn't be a dry eye in the house. National Fishermen would do a front page story. The Anchorage Daily would do a feature article. For all I know, Senator Stevens would call for a Congressional investigation. In the end, investors in processing *will* get ITQs if the Council (and the general public) understand that what Chuck would be saying is true.

On the other hand, the benefit of an ITQ system is that an efficient amount of capital is invested in the fishery. As perceived additional corollary benefits, harvesting and processing can occur when the fish are most valuable and markets for finished products are highest, processors can slow their production to increase recovery and undertake value added processing, waste and discards are reduced, safety is increased and costs are reduced, etc.. Your argument is that it may be more efficient to allocate to processors, catcher/processors and catchers than it would be to allocate to only catcher/processors and catchers because the latter allocation would entail asymmetric information and less than complete markets which may result in catchers selling their quota for less than the actual value of those quotas resulting in a Pareto Inferior Trade, of some unquantifiable degree. Assuming that argument is correct, it may be intellectually interesting but it is not as dramatically important as the taking of property. Is the relatively inefficiency a dime, a dollar, a million dollars or a hundred million dollars? Its too abstract. I guarantee you that no one on the Council will care. Given the SSC is convinced that an ITQ system will create a net national benefit, they will not likely be bothered that one possible ITQ allocation is Pareto optimal over another possible ITQ allocation.² Certainly the salbafish and halibut

¹ In theory, in an open access equilibrium neither sector is earning rent from the fishery. So do processors really lose wealth, or is the situation more accurately stated as catchers are given wealth while processors are not?

² The Magnuson Act does not require the adoption of the most efficient management system possible, otherwise every FMP currently in existence would be in violation of the Act.

ITQ systems were not Pareto optimal. The general belief by the economist who support the ITQ programs for sablefish and halibut is that it is perhaps the most inefficient ITQ system imaginable; however, it is at least slightly better than status quo open access.

These are the primary reasons that I would encourage you to focus on the distributional aspects of the ITQ system. There are still questions that will require answering, such as how far does this go? Are fishermen who have invested human capital included?

Actually, one of the more interesting issues is, if the fishery is privatized, which sector will be the most efficient (i.e., able to acquire quota shares). During the transition period I think it would be the sector that has the lowest variable cost. But after privatized equilibrium is reached, it should be the sector with the lowest average costs. Assuming (as I believe) that factory trawlers have higher fixed cost (and average costs) than shorebased processors, and assuming shorebased processors have higher variable costs, it would mean that during the transition-period factory trawlers could acquire quota shares and when an privatized equilibrium condition is reached, shorebased operations will be more efficient.

Anyway, it is approaching midnight, so please excuse my ramblings. I want to thank you for putting-up with my stubbornness on this issue.

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

Dr. Lee G. Anderson
Chairman

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David R. Kelfer
Executive Director

Anthony D. DiLemia
Vice Chairman

29 June 1994

**The Honorable Thomas J Manton, Chairman
Fisheries Management Subcommittee
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
Room 1334, Longworth House Office Building
Washington, D.C. 20515-6230**

RE: Reauthorization of the Magnuson Fishery Conservation and Management Act

Dear Congressman Manton:

At the meeting of the Chairmen of the Fishery Management Councils held in Washington, D.C. on 14 through 16 May 1994, your staff requested that the Councils submit comments on the various proposals to amend the Magnuson Act. The Mid-Atlantic Council discussed this matter at its last two meetings and this letter is intended to transmit the Council's comments to you.

Our comments will first review the Administration's proposed changes to the Magnuson Act. We will then review some issues the Council supports that are not in the Administration proposal.

ADMINISTRATION PROPOSAL

There was general agreement with the basic concept of the importance of fisheries habitat. There was no agreement that loss of habitat is the "greatest long term threat to fisheries." Habitat loss is a significant long term threat to fisheries, but not necessarily the greatest. The whole question of who is going to do the defining of essential fish habitat and where the funds and staff are going to come from is going to be very difficult.

The Council supports the Administration proposals for foreign fishing permits for transshipment, Atlantic highly migratory species, obtaining economic data from processors, requiring data from internal waters processing operations, assaults on data collectors, large scale driftnets, permit sanctions, a penalty and forfeiture fund, and conservation (required rebuilding of overfished stocks),

The Council did not agree on a position concerning the three year limit on confidentiality of statistics.

The Council supports the Administration proposal for a national data collection program, but believes that regional differences must be addressed. The Council recommends the emergency rule authority be changed to 180 days followed by a second 180 day period. This is more workable than the Administration's 90 days

followed by 270 days.

The Council supports the concept of minimizing unnecessary waste, but questions the wording of the proposed National Standard. How can one specify "necessary waste" as opposed to "unnecessary waste".

The Council took no position on the proposal for a Pacific Council seat for treaty Indians.

The Council could not reach a consensus on the issue of conflict of interest.

The Council supports the Administration proposal for fishery user fees, but strongly recommends that the income from the fees goes into a fund that may be spent only for fisheries management and that the income does not merely replace existing general fund appropriations for fisheries management. There was concern that these funds not be handled as the proceeds from the Saltonstall-Kennedy funds have been handled.

While the data collection programs and incidental harvest research aspects of the streamlined fishery management plans proposal are good, the basic concept, removing management measures from fishery management plans, is totally unacceptable. The law currently requires management measures in the fishery management plans; which makes them subject to the whole open decision making process that is the bedrock of the Magnuson Act. While NMFS may disapprove management measures if they do not satisfy the National Standards or other applicable law, they may not change them. Under the Administration proposal, with the management measures appearing only in the regulations, NMFS would be able to substitute their judgement for that of the Councils, without the requirement for an open meeting.

OTHER ISSUES

The Council also reviewed proposals that were considered in 1993 for Magnuson Act reauthorization and reaffirmed the following positions on matters not included in the 1994 Administration bill.

If North Carolina requests to be made a member of the Mid-Atlantic Council, as well as the South Atlantic Council, the MFCMA should be amended to accomplish this. Many Mid-Atlantic Council FMPs' management units extend to Cape Hatteras. North Carolina members of the South Atlantic Council routinely attend Mid-Atlantic Council meetings. They are voting members of many FMP oversight committees. North Carolina industry representatives meet with Mid-Atlantic Council Industry Advisory Committees. FMP public hearings are routinely held in one or two locations in North Carolina. It follows that they should have a vote in the decision making process if they so desire.

Section 302(b)(1) should be amended by adding a (D) to read: "The Regional Director of the Fish and Wildlife Service for the geographical area concerned, or his designee;" Expansion of the voting membership of each Council to include the Fish and Wildlife Service would lend additional objectivity and balance to the voting membership of the Councils. Because of the Fish and Wildlife Service's involvement in the coastal states marine research activities pursuant to Wallop-Breaux, the agency has a vested interest in, and contributes to, the management of numerous marine species, many of which are under MFCMA management. As a voting member, the Fish and Wildlife Service would bring additional coordination, expertise, and guidance to the Council process.

The MFCMA should be amended to require that the Secretary adhere to the schedules set forth in fishery management plans and regulations. Some of the FMPs and their regulations (for example, Surf Clam and Ocean Quahog, Summer Flounder, and Atlantic Mackerel, Squid, and Butterfish) include schedules for the annual monitoring and quota setting process. These schedules are designed so the quotas and other frameworked measures for the next year can be known as soon as possible before the year begins. For summer flounder, this allows the States to know what quotas they must manage and what recreational measures they must implement. For Atlantic mackerel, this allows for the development of business arrangements if joint ventures and/or foreign fishing are to be allowed.

Section 302(a)(1) should be amended by adding New York to the New England Fishery Management Council. New York fishermen (particularly from eastern Long Island) share fishing grounds and resources with southern New England fishermen while fishermen from western Long Island have the same relationship with fishermen from New Jersey. Their interests could best be represented by New York being added to the New England Council while also remaining part of the Mid-Atlantic Council.

We believe the Magnuson Act should be amended to include the substance requirements of other laws and policy statements (for example, the National Environmental Policy Act, the Paperwork Reduction Act, the Regulatory Flexibility Act, and Executive Order 12291) to comply with their intent and/or make them coincide with the Magnuson Act time frame. Fishery management must comply with the Magnuson Act plus the National Environmental Policy Act, the Paperwork Reduction Act, the Coastal Zone Management Act, the Endangered Species Act, the Regulatory Flexibility Act, the Administrative Procedure Act, and Executive Order 12291. These "other applicable laws" requirements frequently impinge upon or overlap requirements of the Magnuson Act, including meetings, public comment, etc. These overlapping requirements frequently retard and complicate the management process, add to the burden of Council and NMFS staff, and do not provide additional benefits to public or process.

I hope these comments are helpful. If you or your staff have questions, please contact me.

Sincerely,

David R. Kifer
 Lee G. Anderson, *for*
 Chairman

cc: Other Councils
 Jim Mathews
 Rod Moore
 Penny Dalton
 John Moran

**MID-ATLANTIC FISHERY MANAGEMENT COUNCIL
ROOM 2115 FEDERAL BUILDING**

Dr. Lee G. Anderson
Chairman

300 South New Street
Dover, Delaware 19901-6790
302-674-2331
FAX 302-674-6399

David R. Keffner
Executive Director

Anthony D. DiLamie
Vice Chairman

7 July 1994

The Honorable Thomas J. Manton, Chairman
Fisheries Management Subcommittee
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
Room 1334, Longworth House Office Building
Washington, D.C. 20515-6230

RE: Reauthorization of the Magnuson Fishery Conservation and Management Act

Dear Congressman Manton:

At the meeting of the Chairmen of the Fishery Management Councils held in Washington, D.C. on 14 through 16 May 1994, your staff requested that the Councils submit comments on the various proposals to amend the Magnuson Act. This letter sets forth the positions agreed to by the Council Chairs and Vice-Chairs at the meeting in Washington.

COUNCIL COMPOSITION/CONFLICT OF INTEREST

The Council Chairmen oppose giving lower priority to paid association representatives in making Council appointments, because industry representatives have experience and time to study issues and materials associated with Council decisions. We also oppose the Gilchrest Bill requirement for 25% of appointed members to have university, environmental, or other non-user group affiliation. The Governors and the Secretary can already nominate and appoint from a broad variety of interests. Advisory Panels and Scientific and Statistical Committees also provide input from diverse backgrounds.

The Chairmen oppose mandatory recusal and abstention requirements which would deprive the Council of expertise in debating issues and may even rule out most Council members from voting on certain key issues.

The Council Chairmen suggest alternative language to NMFS' proposed procedures:

1. A Council member may not vote on any FMP, FMP amendment, or regulation proposal which would disproportionately advantage that Council member beyond other individuals participating in a particular fishery.
2. Upon request of any Council member, a Council shall make a determination whether an individual may have a disproportionate interest in the decision.
3. Council may authorize participation if the need for the individual's participation outweighs the potential disproportionate interest.
4. Any interested person with a substantial grievance may submit a request to the Assistant Administrator, within 15 days after the vote, to review the interest in question and the Council action. The Assistant Administrator shall be required to act not later than 30

days after receiving the grievance.

OTHER COUNCIL PROCEDURES

The Council Chairmen agree with the proposal to amend compensation rates to reflect new Federal compensation levels since there is no longer a GS grade 16.

We believe Councils should be allowed to retain independent legal counsel.

We do not believe there should be a requirement for a minimum number of Scientific and Statistical Committee and Advisory Panel meetings. This should be left to each Council to determine according to their agenda, the issues being discussed, and budget concerns.

We also oppose requiring a 2/3 vote to approve actions and roll call votes on all decisions.

OVERFISHING/RECOVERY PLANS

Council Chairmen agree that the current overfishing definition in the 602 Guidelines is sufficient. The Council Chairmen and Executive Directors express concern over legislating rebuilding programs, saying that decline in stock abundance may not necessarily be a result of fishing practices. For instance, the Pacific Council cited Pacific salmon where a significant amount of their mortality is non-fishing mortality. Rebuilding plans are best left to each Council to determine for each fishery based on information on the specific fishery and region.

The Chairmen agree that all Councils should move toward an ecosystem approach. However, a Congressional mandate will only make management more difficult without adequate funding to achieve the desired result. The scientific basis for ecosystem management is generally inadequate at this time.

OBSERVERS

Regarding the Gilchrest amendments, the Council Chairmen believe the Councils already have the authority to initiate observer plans. It is not necessary to amend the Act.

HABITAT

The concept of essential habitat is supported by the Council Chairmen, but we are concerned about the adequacy of the data at present. We are also concerned about the availability of funding for the huge amount of work needed to comply with a mandatory program of delineating essential habitat.

Council Chairmen believe the Magnuson Act should allow for discretionary (rather than mandatory) designation of essential habitat in FMPs. If essential habitat is designated in an FMP, project proponents would be required to consult with NMFS (similar to ESA Section 7 consultation) on impacts on species in FMP.

Activities by all entities receiving federal funding for anadromous fish should be required to be consistent with FMPs and the Act; activities should be audited at least biennially.

Chairmen agree that Councils should respond to the need to provide long-term protection for essential fish habitats, but they need the regulatory tools to accomplish this goal, including the additional funding required.

FEES

The Council Chairmen conclude that Councils should be allowed to establish fees for implementation and maintenance of data collection programs and controlled access systems. Fees should be assessed on a regional basis through Council plans or amendments and put in a dedicated fund to be used specifically for the program for which it was collected. A cap on fees should be set.

If the Secretary imposes fees, a substantial amount of the fees collected in a region should go to that region's programs and the fees collected from foreign imports could be used wherever needed in that particular budget cycle. If the Secretary imposes fees, Councils should have input as to the collection and use of the fees.

BYCATCH/WASTE

The Chairmen favor the bycatch demonstration program. We feel that options to reduce bycatch, waste, and high-grading should be included in the discretionary part of the Act.

If a new National Standard 8 is added, the Chairmen recommend that it should read: "Minimize discard of fisheries resources" rather than the language proposed by NMFS. Some discards are unavoidable and a cost of doing business. The Chairmen feel the real issue is reducing discard mortality.

602 GUIDELINES

With regard to the proposal that the 602 Guidelines concerning overfishing become part of the Magnuson Act, the Council Chairmen believe the 602 Guidelines already seem to have the force of law and the Secretary can reject any recommendation which does not conform to the Guidelines and National Standards.

CITIZEN SUITS AND CITIZEN PETITIONS

The Council Chairmen conclude that providing for citizen suits and citizen petitions in the Magnuson Act is not necessary. Citizens already have a number of ways to have input into the fishery management process. We oppose this proposal.

FMP IMPLEMENTATION

The Council Chairmen agree that there is a problem with the current provision of two 90 day emergency periods. They recommend that the Magnuson Act be amended to extend authority to impose emergency rule to 180 days, with one 180 day extension. The Administration's suggestion of 90 days followed by 270 days would not solve the problem. If the first period is 180 days, there will be fewer instances for the need to extend.

With regard to the recommendation for "Interim measures" in the Gilchrest Bill, the Chairmen indicate that a 180 day emergency rule with possible extension of 180 days would make the interim measure unnecessary.

Regional Directors should not vote on any emergency action in any fishery. A unanimous vote without the RD, on emergency actions, should compel the Secretary to act.

The Act should be amended to impose a 60-day time limit for Secretarial action on regulatory amendments and require written response detailing reasons, if disapproved. In general, the Council Chairmen would like some kind of time frame for processing and implementing regulatory actions, similar to FMP amendments.

While it was not discussed at the 1994 Chairmen's meeting in Washington, at the 1993 meeting in San Francisco, the Chairmen adopted a position of regulatory amendments proposed by the Pacific Council. Since it addresses the issue discussed at the Washington meeting in legislative language, I thought it might be of interest to you.

Additionally, FMPs and amendments should be exempt from the impact analyses required by other applicable law. If this exemption is not possible, there should be consistent reviews and time schedules for MFCMA/NEPA. In other words, facilitate review and approval of amendments by having the MFCMA and NEPA (and other) review periods concurrent.

OVERCAPITALIZATION

The Council Chairmen believe the Councils need the tools to deal with overcapitalization, but should not be required to take specific action. Give the Councils authority to research and establish buyback programs if they are feasible for the fishery involved. It was suggested that NMFS develop a revolving fund for buyback programs.

ALLOCATIONS

The Chairmen agree that Congress should not take a position on whether or not ITQs, CDQs, or other allocative programs should be allowed, but rather section 303(b)(6) should be amended to give the Councils clear authority to use ITQs, CDQs, processor quotas, etc., with sufficient guidelines to protect the national interest, existing participants in the fisheries, and conservation of the resource.

GEAR

Council Chairmen voice concern that gear restrictions could be a deterrent to research and development of new and possibly more efficient gear. Councils should preserve the right to determine whether to prohibit certain types of gear. A particular gear may be acceptable in one fishery or area and totally inappropriate for another. The ability to apply for experimental permits now exists and, along with Council oversight, can provide protection and yet allow new gears to be tested.

FISHERIES UNDER MORE THAN ONE COUNCIL JURISDICTION

The Chairmen of 3 out of 5 affected Councils recommend return of Highly Migratory Species in the Atlantic EEZ to the Councils. Those opposed cited budget concerns as the reason to leave authority with NMFS. Four out of 5 affected Councils recommend that actions be approved by a simple majority of voting members of all 5 Councils combined.

BEST SCIENTIFIC INFORMATION AVAILABLE

The Council Chairmen conclude that no action is required in this area. The Secretary may already disapprove actions based on whether or not the best scientific information was utilized. The Gilbreath amendment indicates any scientist, not just members of the Scientific and Statistical Committees, could object to Council recommendations and the Secretary would be compelled to disapprove.

OTHER ISSUES

The Chairmen support a limit on disclosure of information collected pursuant to the North Pacific Fisheries Research Plan (Section 313) when information is not relevant fishery management information.

RELATED TO ATLANTIC TUNAS CONVENTION ACT

Council Chairmen make no recommendations concerning changes to the Atlantic Tunas Convention Act.

FOREIGN FISHING PERMITS FOR TRANSSHIPMENT

The Chairmen have no recommendation in the area of foreign fishing permits for transshipment, but stress the need for NMFS to consider specific requirements in their areas, that is, vessel tracking systems.

ECONOMIC DATA FROM PROCESSORS

With regard to the proposal that processors be required to submit economic data, the Council Chairmen feel that this information was very specifically exempted from the Act to protect confidential economic data.

3-YEAR LIMIT ON CONFIDENTIALITY OF STATISTICS

The Council Chairmen oppose the recommendation that statistics not be considered confidential after three years. Disclosure of any confidential information, particularly after only three years, could deter fishermen and processors from divulging reliable information. It was also pointed out that States may not be willing to share confidential data if a future release is against their policy.

NATIONAL DATA COLLECTION PROGRAM

Concerning the NMFS proposal for a National Data Collection Program, the Council Chairmen conclude that the Councils already have the authority to initiate data collection programs, and several have. Most fish are landed within the States' jurisdiction and their data gathering programs should be sufficient. One suggestion was to set national standards for recordkeeping and getting States to agree and comply. It may be appropriate to develop regional data systems, like PacFIN in the Pacific.

ASSAULT AGAINST DATA COLLECTORS

The Council Chairmen support the proposal to protect data collectors.

LARGE SCALE DRIFTNETS

The Chairmen support the proposal concerning large scale driftnets.

PACIFIC COUNCIL SEAT FOR TREATY INDIAN

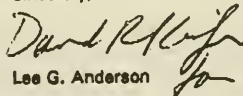
The Chairmen did not take a position on this proposal.

STREAMLINED FISHERY MANAGEMENT PLANS

The Chairmen are in favor of increasing efficiency and reducing the time required to implement fishery regulations. There is some concern, however, over the amount of latitude NMFS would have in interpreting Council intent and changing the regulations submitted by the Councils. Also, it is not clear how the NMFS' proposal will streamline FMPs given NEPA requirements.

I hope the above comments will be helpful in your development of the Magnuson Act reauthorization package. If you or your staff have questions, please contact us.

Sincerely,


Lee G. Anderson

Enc.

cc: Other Councils
Jim Mathews
Rod Moore
Penny Dalton
John Moran

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL
ROOM 2115 FEDERAL BUILDING

Dr. Lee G. Anderson
Chairman

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David R. Keifer
Executive Director

Anthony D. DiLemia
Vice Chairman

15 July 1994

The Honorable Thomas J. Manton, Chairman
Fisheries Management Subcommittee
Committee on Merchant Marine and Fisheries
U.S. House of Representatives
Room 1334, Longworth House Office Building
Washington, D.C. 20515-6230

RE: Reauthorization of the Magnuson Fishery Conservation and Management Act

Dear Congressman Manton:

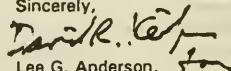
At the meeting of the Mid-Atlantic Fishery Management Council held on 13 - 14 July 1994 the Council voted to request that language be included in the Magnuson Act reauthorization legislation permitting Councils to initiate a moratorium on entry of additional commercial vessels on a regional basis prior to the development of a fishery management plan.

There is general agreement that there are too many fishing vessels operating in the northeast (from Cape Hatteras, North Carolina to the Canadian border). The Councils are developing fishery management plans intended to allow fish stocks to recover from overfishing, such as our Summer Flounder Fishery Management Plan and the New England Council's Northeast Multispecies and Atlantic Sea Scallop Fishery Management Plans, which are currently in effect, and our Scup and Black Sea Bass Plans, which will go to hearings shortly. All of these Plans include moratoria on entry of additional vessels into each of the fisheries. Fishermen in these fisheries respond to the rigorous management controls by expanding into other as yet unregulated fisheries, while still maintaining a role in the regulated fisheries. Obviously, additional vessels are free to enter the currently unregulated fisheries. The result is that the unregulated fisheries can become overfished before plans can be developed for them and the economic situation of the fishermen will continue to deteriorate.

The Council's entry moratorium proposal is intended to give the Councils the opportunity to essentially freeze the number of vessels, that is, the capital investment of the industry, until appropriate fishery management plans can be developed. Vessels could still move among the fisheries in the region, but new vessels could not be added.

I hope these comments are helpful. If you or your staff have questions, please contact me or Dave Keifer.

Sincerely,


Lee G. Anderson,
Chairman

cc: Jim Mathews
Rod Moore
Penny Dalton
John Moran

Mrs. Edward T. Smith
7605 Worcester Highway
Newark, MD 21841

July 4, 1994

Dear Sir,

My husband is a commercial fisherman who has made his living catching Black sea bass and lobsters for over twenty years. Under a lobster license moratorium and a proposed sea bass moratorium, he will not be allowed to fish.

The permits go to boats. My husband was a crewman for 16 years and the boat he now has is new and, therefore, doesn't qualify for permits.

Most of the boats he has worked on have been bought by wealthy investors for tax write offs. They qualify for permits.

The regulations are supposed to stop overfishing. According to N.O.A.A. statistics, half the sea bass landed are caught by recreational fishermen. A small percentage are caught in wooden pots, the most selective gear, which is what my husband uses. He's one of the few left who know how to build a wooden bass pot.

Many of the more experienced fishermen are being put out of work by the practise of licensing vessels instead of men. This method is as insane as issuing a license to practice medicine to a doctor's office instead of the doctor.

Recent legislative proposals, such as user fees, risk adverse management and individual transferable quotas, will make such injustices more prevalent. These methods are disastrous to the fish and to the people who catch them.

Sincerely,

Mrs. Edward T. Smith

**Center for Marine Conservation**

June 28, 1994

The Honorable Thomas J. Manton
Chairman
Subcommittee on Fisheries Management
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

You and the Subcommittee have taken a very deliberate and thoughtful approach to reauthorization of the Magnuson Fishery Conservation and Management Act, and we appreciate the fact that you have used the hearing process to explore issues rather than specific legislative proposals. It has come to our attention, however, that the Subcommittee Hearing on FCMA reauthorization, scheduled to explore user fee issues, may instead cover the entire spectrum of the Administration's bill, H.R. 4430.

If that is the case, we respectfully urge you to use the hearing to examine H.R. 4404, which also offers a comprehensive proposal for reauthorization, and contains many provisions that are comparable to the Administration bill.

We believe Mr. Gilchrest, principal sponsor of H.R. 4404, and his more than 40 co-sponsors, should have the same opportunity for a hearing on their bill as the Administration has on H.R. 4430.

Thank you for your continuing work on this important reauthorization. We look forward to working with the Subcommittee as the debate progresses.

Sincerely,

Suzanne Tudicello

Vice President for Programs and General Counsel





June 27, 1994

Honorable Thomas J. Manton, Chairman
 Subcommittee on Fisheries Management
 House of Representatives
 Washington, D.C. 20215

Dear Mr. Chairman:

I am writing to support Congressman Wayne Gilchrest's request to testify on his bill (H.R. 4404) at a hearing on the reauthorization of the Magnuson Act scheduled for Wednesday, June 29, in your subcommittee.

Originally, I had understood that next week's hearing was to focus solely on the subject of fishery user fees. Apparently, plans for the hearing now call for a discussion of the Administration's bill to reauthorize the Magnuson Act (H.R. 4430). It seems logical to me that Mr. Gilchrest's bill, which was introduced prior to the Administration's bill and now has nearly 50 cosponsors, should also be discussed at the hearing. That way, members of the subcommittee would have the opportunity to debate the full range of options on each issue in the reauthorization.

If you are unable to accommodate a full discussion of these bills at Wednesday's hearing, perhaps you would consider scheduling a separate hearing in the near future at which Mr. Gilchrest's bill, which WWF wholeheartedly supports, could receive the attention it deserves.

Thank you for considering my request on this important matter. I look forward to learning of your decision regarding next week's hearing.

Sincerely,

Michael Sutton
 Vice President
 U.S. Land & Wildlife Program

cc: Rep. Gilchrest
 Marine Fish Conservation Network

World Wildlife Fund
 1250 Twenty-Fourth St., NW Washington, DC 20037-1175 USA
 Tel: (202) 293-4800 Telex: 64505 PANDA FAX: (202) 293-9211
 Incorporating The Conservation Foundation. Affiliated with World Wide Fund for Nature.

GREENPEACE



June 27, 1994

The Honorable Thomas Manton
Chair
Subcommittee on Fisheries Management
534 Ford House Office Building
Washington, DC 20515

BY FACSIMILE

Dear Chairman Manton:

On behalf of the 1.8 million supporters of Greenpeace in the United States, I am writing to support Congressman Wayne Gilchrest (R-MD)'s request to testify at the hearing on June 29th in support of his bill HR 4404, or at another hearing as soon as possible.

Originally, I understood that the June 29th hearing was supposed to focus on the Clinton Administration's proposal for user fees. However, we learned early last week that it will also be about HR 4430, the Administration's proposal for amending the Magnuson Act. Since, the Gilchrest bill is about the same subject, and currently enjoys a far greater level of Congressional support, 43 cosponsors for HR 4404 to 1 cosponsor for HR 4430, Congressman Gilchrest's request seems to be a logical one.

I look forward to hearing from you.

Sincerely,

Gerald B. Leape
Greenpeace

1436 U Street, NW • Washington, DC 20009 • Tel (202) 462-1177 • Fax (202) 462-4507 • Tlx 89-2350

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EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

June 29, 1994

Honorable Thomas J. Manton
Chairman
Subcommittee on Fisheries
Management
U.S. House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

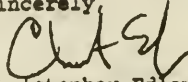
I am writing to express the Administration's position regarding the fee collection provisions included in the President's FY 1995 Budget and similar provisions in the House-passed appropriations language for the National Oceanic and Atmospheric Administration (NOAA).

The Departments of Commerce, Justice, State, the Judiciary, and Related Agencies appropriations bill for FY 1995 contains language that states that NOAA shall collect, consistent with existing law, fees to recover the costs of administering living marine resources, marine sanctuary, and aeronautical charting programs. As such fees are received during FY 1995, the amount appropriated from the general fund shall be reduced by an amount equal to the fees collected, estimated by the Congressional Budget Office (CBO) to be \$41 million. With the exception of the exclusion of the proposed waiver of 16 U.S.C. 1854(d) and the requested amount of the fees, the House language is identical to the President's Budget request. We understand that the CBO has scored the full amount of the estimated fees consistent with the bill language.

The Administration recognizes the intent of the House that the full amount appropriated from the General Fund be available for these programs. We are reviewing how the Department of Commerce would propose to raise the fees under the conditions of existing law. Although we believe it would be feasible technically to raise the fees, we note that the Administration's proposed amendments to the Magnuson Fishery Conservation and Management Act, in particular, provide an important degree of added flexibility to assess and collect fees for the support of fisheries programs. The Administration would appreciate the opportunity to continue to work with the Congress to enact more flexible and effective authorizations for the collection and use of fees. Establishing fees is an important source of funds for our investment in the restoration of commercial fisheries in FY 1995, and in the future.

The Administration appreciates the House's support of NOAA fees. We would encourage the Senate also to support the proposed fee measures during consideration of the President's FY 1995 budget request for NOAA.

Sincerely,



Christopher Edley, Jr.
Associate Director for
General Government and Finance

Identical Letters Sent to Honorable John C. Danforth,
Honorable Pete V. Domenici, Honorable Jack Fields,
Honorable Ernest F. Hollings, Honorable John F. Kerry,
Honorable Alan B. Mollohan, Honorable Roger Harold,
Honorable Ted Stevens, Honorable Gerry E. Studds,
and Honorable Don Young



UNITED STATES DEPARTMENT OF COMMERCE
The Under Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

JUN 22 1994

The Honorable Thomas J. Manton
Chairman, Subcommittee on Fisheries Management
Committee on Merchant Marine and Fisheries
House of Representatives
Washington, D.C. 20515-6230

Dear Mr. Chairman:

I would like to thank you for introducing the Administration's amendments to the Magnuson Fishery Conservation and Management Act (Magnuson Act). I believe that our amendments address both the short- and long-term critical issues facing the management of marine fisheries.

As you know, we have made significant recommendations in our legislative package. One highlight is a provision having the fishery management councils designate areas of essential fish habitat. This will work to protect areas critical to sustaining fish populations. The package also has a provision to address the concerns of many regarding council members having financial conflict of interests in their decisions. In addition, to ensure the long-term conservation of fishery resources and the economic viability of the fishing industry, we have included provisions which ensure timely action to end overfishing, rebuild fish stocks to their maximum sustainable levels, and encourage the reduction of the bycatch of nontarget species. In order to meet the needs of fishermen as well as the resource, we have proposed streamlining the process for developing conservation and management measures. Finally, we have developed a package of user fees to ensure a return to the public for the commercial use of these public resources and to provide funding for National Marine Fisheries Service management and research programs.

I look forward to working closely with you and other members of the House Committee on Merchant Marine and Fisheries in enacting a comprehensive set of amendments to the Magnuson Act which promote the long-term productivity of our Nation's living marine resources.

Sincerely,

James Baker

D. James Baker

THE ADMINISTRATOR



EMERGENCY ACTIONS:

The amendments would expand the timeframe for a second "emergency action period" from the current 90 days to 270 days. Approval of the additional 270-day period would be dependent on provision for public comment during the initial 90-day emergency and progress by the council, or Secretary as appropriate, on the development of an FMP amendment with a permanent solution. The current 180 days (two 90-day periods) is frequently insufficient time for a council or the Secretary to implement a permanent solution through an FMP or amendment. In addition, emergency regulations to protect public health would remain in effect until the emergency no longer exists.

FOREIGN FISHING:

The amendments would delete the requirement that the Secretaries of Commerce and State prepare a foreign allocation report for Congress and the President each year. The report is no longer necessary since there are no foreign fishermen and joint venture operations in the U.S. EEZ.

The amendments would also allow the Secretary to issue a permit to foreign vessels for transshipment of fish products in the absence of a governing international fishery agreement (GIFA). The Magnuson Act requires foreign transshipment to satisfy the same GIFA, application, and permit requirements as are required of foreign nations whose vessels and owners engage in the catching, taking and processing of fish in the EEZ. Foreign fishing, such as joint ventures, will continue to be authorized only under a GIFA; however, the approval of foreign transshipments at sea in the EEZ or within the boundary of any state that is found to be in the interest of the United States will be encouraged by not subjecting them to the same stringent approval requirements as for harvesting vessels.

LARGE-SCALE DRIFTNET FISHING REPORT:

The amendments would eliminate the requirement that a Driftnet Report be prepared annually. The purposes of this requirement have been met, with Japan, Korea, and Taiwan committing to the implementation of the United Nations Resolution calling for a moratorium on the use of driftnets after December 31, 1992. While we do not believe that there should be a statutory requirement for an annual report, we will produce the report on an "as needed" basis.

The amendments also address two problems that have arisen in enforcing the prohibition against large-scale driftnet fishing.

The amendments would clarify what vessels are subject to U.S. jurisdiction, to include foreign vessels whose nation authorizes the United States to exercise jurisdiction, and stateless vessels. It would also create a rebuttable presumption that a vessel with gear capable of use for large-scale driftnet fishing is engaged in such fishing.

EXTENSION OF CRIMINAL PENALTIES:

The amendments would extend the protection of criminal penalties to persons employed by or under contract to NMFS and involved in collecting fishery information in their official duties. Unlike observers, who were afforded protection under the Amendments of 1990, no prohibitions or criminal sanctions explicitly address assaults on statistical agents. Statistical agents, however, are often the primary Federal contact with members of the fishing industry who may take exception to regulatory actions taken under the Magnuson Act, the Endangered Species Act, the Marine Mammal Protection Act, the Lacey Act, or other applicable law.

JUDICIAL REVIEW OF PERMIT SANCTIONS:

The amendments would provide for judicial review of permit sanctions. Although the Magnuson Act provides that any person who is assessed a civil penalty may obtain a review of the penalty in U.S. district court, it does not provide explicitly for such review of permit sanctions. The two standards should be treated the same, especially since they may be imposed together in the same administrative hearing. The amendments would also delete language regarding service to ensure consistency of service procedures with other district court actions in accordance with the Federal Rules of Civil Procedure.

ENFORCEMENT:

The amendments would allow the Penalty and Forfeiture Fund to be capitalized by receipts from, and to be used for, the enforcement of all statutes dealing with living marine resources. The Magnuson Act does not currently provide for monies from the Penalty and Forfeiture Fund to be used for enforcement-related activities associated with various living marine resource statutes such as the Marine Mammal Protection Act.

Additionally, the amendments would provide that any person found in any enforcement proceeding to be in violation of the Act or any other marine resource law shall be liable for the costs of the sale, storage, care, or maintenance of fish or property seized as a result of the violation.

OBSERVER WAGES AS MARITIME LIENS:

The amendments would provide observers with the same lien priority for past-due wages as is currently provided for seamen's liens under admiralty and general maritime law. This addresses the problem of vessels, or contracting parties, not paying for observer services.

AUTHORIZATION OF APPROPRIATIONS:

The amendments would authorize appropriations for the Department of \$103,218,000 for FY 1994, \$142,502,000 for FY 1995, and "such sums as may be necessary" for FY 1996.



Texas Shrimp Association

P.O. Box 1020 • 126 West Cleveland • Aransas Pass, Texas 78336
Telephone (512) 758-5024 • FAX (512) 758-5853

RECEIVED

JUL 22 1994

COMMITTEE ON MERCHANT MARINE
AND FISHERIES

June 15, 1994

Honorable Gerry Studds
U.S. House of Representatives
237 CHOB
Washington, D.C. 20515

Dear Congressman Studds:

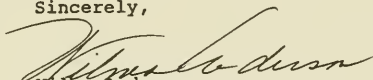
Re Opposition to Fishing Tax (User Fee) Amendment to the Magnuson Act Reauthorization

I understand, that the House Fisheries Management Subcommittee has tentatively scheduled a hearing for June 29th on the fishing tax amendment to the Magnuson Act, and the staff of the Senate Commerce Committee is considering the bill. It is my opinion this is a discriminatory amendment, in that, it includes only the commercial fisheries, while excluding the recreational fisheries who benefits from management measure expenditures via the National Marine Fisheries Service budget.

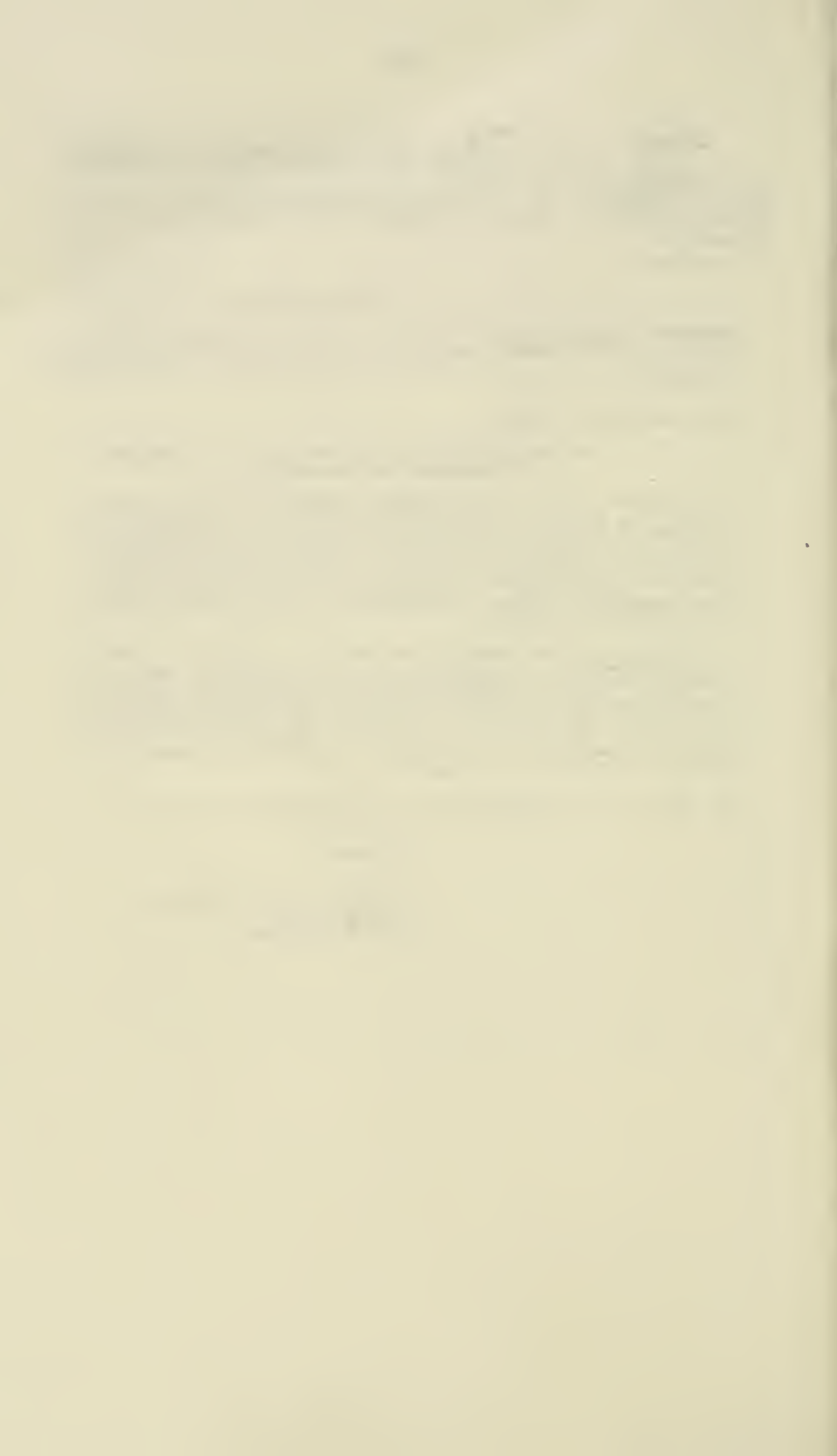
A fishing tax would impose severe economic impact on the Texas shrimp fishery and its employment base of over 30,000 jobs. The economic base of the shrimp fishery is now marginal from seven (7) years of loss incurred from the mandatory use of TED's. To impose an additional operating cost of a fishery tax on this fishery that can not pass this cost on would force the fishery to seek similar government assistance now in process with the New England Ground Fishery and the West Coast Salmon Fishery.

On behalf of the membership of the Texas Shrimp Association, I strongly urge no passage of this amendment.

Sincerely,


Wilma Anderson
Executive Director







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